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In The

Supreme Court of the United States

October Term, 1995

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

vs.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY, AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

Petition for A Writ of Certiorari to the Superior Court of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the First Amendment of the United States Constitution preclude the Pennsylvania court's exercise of jurisdiction over a corporate controversy related to the succession of office defined by the corporate bylaws, custom and practices of the church where fraud and mismanagement are alleged?

2. Was the summary foreclosure of an opportunity for Petitioner to demonstrate that the instant controversy was secular and not doctrinal or essentially an ecclesiastical matter a violation of due process of law?

PARTIES TO THE PROCEEDING

The parties to this proceeding are:

Petitioners — The Church of The Lord Jesus Christ of the Apostolic Faith, Roddy J. Nelson Shelton, I; Roddy J. Nelson Shelton, II; Frank Matthews.

Respondents — Erik Shelton, Kenneth Shelton, Alonzo Woodward Reagan, Fincourt B. Shelton, John Carlton Thomas, Daniel Bowens, George Brown, Individually and as Trustees of the Church of The Lord Jesus Christ of the Apostolic Faith, Inc. There are no parent corporations or nonwholly owned subsidiaries or other parties to this proceeding.

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OPINIONS BELOW

The Order denying Petitioner's Petition for Allowance of Appeal from the Supreme Court of Pennsylvania-Eastern District, No. 95-1004 (Pennsylvania Supreme Court, April 30, 1996, Per Curiam) is unreported. Said Order is reprinted in the attached Appendix A, pp. 1a-2a.

The Judgment, Order and Opinion in the matter of *Church of the Lord Jesus Christ of the Apostolic Faith v. Erik Shelton, et al.*, No. 94-03125 (Pennsylvania Superior Court, November 20, 1995) is unreported. Said Judgment, Order and Opinion is reprinted in the attached Appendix B, pp. 3-6a.

The trial court Opinion in the matter of *Church of the Lord Jesus Christ of Apostolic Faith v. Erik Shelton, et al.*, CP9206-1887 (Philadelphia Court of Common Pleas, April 8, 1995), is unreported. Said Opinion is reprinted in the attached Appendix C, pp. 7a-12a. The Order of the trial court sustaining Respondents' Preliminary Objections, No. 2101, November Term, 1991 (Philadelphia Court of Common Pleas, August 2, 1994) is unreported. Said Order is reprinted in the attached Appendix G, p. 29a.

The Order of the trial court denying Plaintiff's Request for a Preliminary Injunction, No. 2101, November Term, 1991 (Philadelphia Court of Common Pleas, November 20, 1991) is unreported. Said Order is reproduced in the attached Appendix D, p. 14a. The opinion of the trial court denying Petitioner's Request for a Preliminary Injunction No. 2101, November Term 1991 (Philadelphia Court of Common Pleas, November, 20, 1991) is unreported. The transcript of the opinion is attached as Appendix F, p. 19a.

The Order of the trial court for hearing on the Preliminary Injunction, No. 2101, November Term, 1991 (Philadelphia Court of Common Pleas, November 17, 1991) is unreported. Said Order is reprinted in the attached Appendix E, p. 15a.

STATEMENT OF JURISDICTION

The judgment of the Superior Court of Pennsylvania was entered on November 20, 1995. A Petition for Allowance of Appeal to the Supreme Court of Pennsylvania was denied on April 30, 1996. Petitioner seeks review of the Judgment of the Superior Court of Pennsylvania.

The jurisdiction of the Honorable Court is conferred pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Amendment I of the United States Constitution directs, in pertinent part, that:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or of the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Section One of the Fourteenth Amendment of the United States Constitution states:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof,

> are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Pennsylvania Rule of Civil Procedure 229(c) regarding "Discontinuances", directs in pertinent part that:

> (a) A discontinuance shall be the exclusive method of voluntary termination of an action, in whole or in part, by the plaintiff before commencement of the trial;
>
> * * *
>
> (c) The court, upon petition and after notice, may strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense, or prejudice.

Pennsylvania Rule of Civil Procedure 1017 regarding "Pleadings Allowed", directs in pertinent part that:

> (a) Except as provided by Rule 1041.1, the pleadings in an action are limited to a complaint, an answer thereto, a reply if the answer contains new matter or a counterclaim, a counter-reply if the reply to a

> counterclaim contains new matter, a preliminary objection and an answer thereto.

Pennsylvania Rule of Civil Procedure 1028 regarding "Preliminary Objections" provides in pertinent part that:

> (a) Preliminary objections may be filed by any party to any *pleading* . . . .

(Emphasis added).

Title 15 of the Pennsylvania Consolidated Statutes Annotated, Section 5101, provides in pertinent part that its:

> . . . subpart shall be known and may be cited as the Nonprofit Corporation Law of 1988.

Title 15 of the Pennsylvania Consolidated Statutes Annotated, Section 5764.1, which pertains to actions by members of nonprofit corporations in the Commonwealth of Pennsylvania, provides in pertinent part that:

> **(a) General rule. — Except as provided in subsection (b) of this section, in any action brought to enforce a secondary right on the part of one or more members against any officer or director, or former officer or director, of a nonprofit corporation because such corporation refuses to enforce its rights which may properly be asserted by it, the plaintiff or plaintiffs must aver and it must be made to appear, that the plaintiff or each plaintiff was a member of such corporation at the time of the transaction of which he complains.**

STATEMENT OF THE CASE

The Trustees of General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc, is a Pennsylvania nonprofit corporation created under the not-for-profit laws of the Commonwealth of Pennsylvania, 15 Pa.C.S.A., § 5101 *et seq.* The corporation was duly formed in 1947, under the direction of Bishop S.C. Johnson, who was President of the corporation until his death in 1961. In 1961, upon the death of Bishop Johnson, Samuel McDowell Shelton, then General Secretary of the corporation, ascended to the office of the President of the Corporation and General Overseer, consistent with the corporate bylaws, practices and custom.[1] Thereafter, in September 1977, President Shelton nominated Roddy J.N. Shelton, I, to be Secretary General. The General Assembly of the corporation ratified the nomination. When the President of the Corporation, Bishop Samuel McDowell Shelton died, on October 13, 1991, according to the corporate bylaws, custom and practice, General Secretary Roddy J.N. Shelton, I was to succeed the deceased. Because Respondents refused to follow the bylaws, custom and practice which dictated that Roddy J.N. Shelton, I ascend to the office of the presidency, Petitioners sought to enjoin the Respondent members of the Board of Trustees from refusing to allow the orderly, legitimate succession.

The Complaint upon which the Petition for Preliminary Injunction rested alleged, inter alia, misrepresentation as well as violation of the corporate bylaws, and unlawful interference with the business of the corporation which caused loss of Church property, disharmony and other disruptive consequences. On November 20, 1991, after hearing testimony, the Honorable Abraham J. Gafni dismissed the preliminary injunction, but not

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1. Article XVI of the corporate bylaws states in pertinent part that the General Secretary shall succeed the President upon the death of the President.

the complaint, concluding that the controversy concerned "a serious tribunal dispute with respect to who is authorized to act as the religious leader for a church." (Appendix F, p. 24a). The court, however, added:

> That is not to say that the Court may not ultimately find itself involved in this matter.
>
> It well may be, and I'm sure counsel are aware of this, that cases do indicate that if there are suggestions of fraud, mismanagement or other matters the Court may involve itself in the management of the business or practices or the management of the assets of the corporation, and this it may do. . . . [I]f any of the exceptions whereby the Court may intrude in the affairs of the church come into play, this Court stands ready to involve itself. Under such circumstances the Preliminary Objections requesting that this Court determine that the Court is without Jurisdiction to entertain this motion at least in its current posture will be allowed and the request for a preliminary injunction alone will be dismissed. . . . If this Court has brought to its attention any suggestion that there is mismanagement or fraud either in the selection of officials or in the management of the assets, . . . I want to tell you that if that occurs you will not have any difficulty in asserting jurisdiction in the matter.

(Appendix F, pp. 24a, 26a).

Thereafter, Petitioners and Respondents arrived at an agreement whereby the determination of which person would become President and General Overseer would be made by the Board of Trustees of the corporation at a meeting of the General Assembly which was to be convened on December 29, 1991. Based on this understanding, on November 27, 1991, Petitioners filed an Order to Withdraw, Discontinue and End the Matter. However, Respondents failed to carry out the terms of this agreement, instead taking steps unlawfully to amend the corporate bylaws and unilaterally to remove Petitioners as Trustees at a meeting for which notice had not been given under the corporate election statutes.[2] Furthermore, drawing upon unlawfully obtained authority as Trustees, in February 1992 Respondents ordered Petitioners and their supporters barred from entering the church buildings, threatened them, and physically expelled some 250 of them when they entered for worship.

In June 1994, Petitioners who continued to be concerned about the Respondents' unlawful acts, including their improper dealings involving corporate finances and property, and physical abuse of church members, sought to set aside the aforementioned Order to Withdraw Discontinue and End by filing a Petition to Set Aside and Vacate the Order To Withdraw, Discontinue and End. However, on August 2, 1994 after Respondents filed preliminary objections to the petition, contesting jurisdiction, but before the preliminary objections were answered by Petitioners, the trial court entered an order denying the petition. (Order of Judge DiBona, Appendix G, p. 29a). In an opinion in response to Petitioners' appeal from that Order, Judge DiBona of the Court of Common Pleas of Philadelphia[3] concluded that

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2. 15 Pa. C.S.A. § 5703 requires five-day, written notice of every special meeting of the Board of a nonprofit corporation.

3. Since Judge Gafni had retired, the matter was assigned to the Honorable Alfred J. DiBona, Jr. of the Philadelphia Court of Common Pleas.

Judge Gafni's conclusion, that the court lacked jurisdiction over the Petition for Preliminary Injunction because the controversy was essentially doctrinal, was dispositive of this subsequent effort to set aside the discontinuance. Judge DiBona opined that the trial court had effectively and properly dismissed the Petitioners' action for lack of jurisdiction — as Judge Gafni had ruled in the earlier effort to secure a preliminary injunction — because the substantive dispute still concerned the ascendancy to the position of General Overseer, a matter essentially ecclesiastical and one calling for Pennsylvania's "deference rule." Judge DiBona thus rejected Petitioners' contention that they were entitled to answer the Preliminary Objections of the Respondents before the Petition to Vacate was denied.

The Pennsylvania Rules of Civil Procedure provide that after a discontinuance has been entered, a court may, upon petition, strike off the discontinuance and enter an Order to protect the rights of any party in certain circumstances. *Palmatier v. Palmatier,* 19 D. & C. 3d 566 (1981). Petitioners filed such a Petition in this matter.

Specifically, Pennsylvania Rule of Civil Procedure 229(c) provides that:

> (c) The Court, upon *petition* and after notice, my strike off a discontinuance in order to protect the rights of any party from unreasonable inconvenience, vexation, harassment, expense or prejudice.

(Emphasis added).

The party seeking to have a discontinuance stricken must show that he has been deprived of a substantial right, will be prejudiced by the discontinuance or has suffered actual

prejudice. *Hudson v. Cohen*, 47 D. & C. 2d 510, 511 (1966). Moreover, Rule 229 (c) does not establish a time within which a motion to strike a discontinuance must be filed. *Nastsiak v. Scoville Enterprises, Ltd.*, 421 Pa. Super. 542, 618 A.2d 471 (1992). In the instant case, Petitioners argued that they were erroneously denied the opportunity to show deprivation or the vexatious behavior of Respondents.

Pennsylvania Rule of Civil Procedure 1017 reads in pertinent part as follows:

> (a) Except as provided by Rule 1041.1, the pleadings in an action are limited to *a complaint, an answer hereto, a reply if the answer contains new matter or counterclaim, a counter-reply, if the reply to the counterclaim contains new matter, a preliminary objection and the answer hereto.*

(Emphasis added). Petitioners therefore argue that a Petition to Vacate an Order to Withdraw, Discontinue and End is not a pleading and that similarly, a Petition to Vacate an Order to Withdraw, Discontinue and End is not a pleading to which Preliminary Objections may be filed in response thereto.

Petitioners further reasons that while Preliminary Objections may be permitted to contest the jurisdiction of a court, they may only be filed in response to a pleading, and not a Petition to Vacate. Thus lower court not only improperly sustained Respondents' Preliminary Objections, but did so prematurely and without allowing Petitioners the opportunity to respond to the Preliminary Objections and show the Court that it did in fact have jurisdiction over this matter, as more fully explained herein.

Petitioner appealed Judge DiBona's decision to the Pennsylvania Superior Court, contending, *inter alia,* that the court did have jurisdiction over corporate matters about which they were complaining. However, agreeing that the matter "involves a challenge to church leadership which is doctrinal or ecclesiastical in nature" and that the "critical issue is our courts' lack of jurisdiction in this doctrinal matter," the Superior Court affirmed the lower court's decision "on the basis of its opinion." (Judgment Order, Appendix B, p. 3a.). The Pennsylvania Supreme Court summarily denied allocatur on this matter by order dated April 30, 1996. (Appendix A, p. 1a.).

REASONS FOR GRANTING THE WRIT

I.

THE PENNSYLVANIA APPELLATE COURT'S AFFIRMANCE OF THE RULING BY JUDGE DI BONA THAT THE TRIAL COURT LACKED JURISDICTION IS INCONSISTENT WITH THE PREVAILING FEDERAL RESPONSE TO SEPARATION OF CHURCH AND STATE CONCERNS IN INTRA-CHURCH DISPUTES AND WITH PENNSYLVANIA PRECEDENT.

The First Amendment does not preclude consideration of allegations related to corporate succession of office and of mismanagement of business affairs and finances by church leaders or claims related to bad faith conduct and fraud of those leaders. Thus the concerns which are alleged by Petitioners to lie at the heart of this controversy are not the kind which are beyond the court's jurisdiction because they are considered essentially "doctrinal" or "ecclesiastical" in nature.

In *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 713, 95 S. Ct. 2372, 49 L. Ed. 2d 151 (1976), this Court

recognized the constitutional mandate known as the deference rule initially set forth in *Watson v. Jones,* 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872). The rule simply provides that civil courts are bound to accept the decision of the highest jurisdiction of a religious organization of hierarchical policy on matters of discipline, faith or ecclesiastical rule, custom or law. This Court explained in *Kedroff v. St. Nicholas Cathedral Church of Russian Orthodox Church,* 344 U.S. 74, 73 S. Ct. 143, 87 L. Ed. 720 (1952) that First Amendment values would be jeopardized by permitting civil courts to resolve doctrinal disputes, permitting anyone aggrieved by decisions of religious bodies to simply appeal to the secular courts and have them reversed. *Id.* at 115, 73 S. Ct. at 154. The rule of deference was thus developed in contemplation of the dangers of excessive entanglement.

In contrast, this controversy is one that should be resolved by a civil court because it concerns corporate law, essentially a civil matter — a dispute that can be resolved by "neutral principles" of law in ways which do not jeopardize First Amendment values. *See Jones v. Wolf,* 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979); *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,* 393 U.S. 440, 89 S. Ct. 601, 21 L. Ed. 2d 658 (1969). Affirming the constitutionality of a neutral-principle approach to resolve a dispute over the ownership of church property following a schism (and rejecting the dissent's position that a compulsory deference approach is constitutionally required in such a dispute involving rival religious factions), this Court in *Jones v. Wolf, supra,* 443 U.S. at 602, 99 S. Ct. at 3025, stated:

> The State has an obvious and legitimate interest in the peaceful resolution of property disputes, and in providing a civil forum where the ownership of church property can be determined conclusively.

In factual contexts involving property disputes, Pennsylvania courts similarly have utilized a neutral-principle approach. Thus they have generally applied the rule of deference mindful of their responsibility to continue to resolve disputes that are civil in nature or able to be considered under neutral-principle analysis. As the Supreme Court of Pennsylvania itself recognized in a case involving a dispute about property ownership between two church organizations, *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317, *cert. denied*, 474 U.S. 887, 106 S. Ct. 198, 88 L. Ed. 2d 167 (1985), notwithstanding the importance of deference:

> All disputes among members of a congregation, however, are not doctrinal disputes. Some are simply disputes as to meaning of agreement on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not predicated on any religious doctrine. . . . [T]he question of what [members] agree to, or whether they agreed at all, are not doctrinal and can be resolved without intruding into the sacred precincts.

Id. at 260, 489 A.2d 1320, *citing Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, supra.* Indeed in *Poesnecker v. Ricchio*, 158 Pa. Commw. 459, 631 A.2d 1097, 1099 (1993), *cert. denied*, 115 S. Ct. 727, 130 L. Ed. 2d 632 (1995), the Pennsylvania Commonwealth Court approved the trial court's application of neutral principles in concluding that a leader's removal from a corporate office of a society engaged in a mixture of religious, fraternal and corporate activity was justified, recognizing that "civil courts may resolve disputes involving churches that do not require a determination of

ecclesiastical issues." Consistent with this reasoning, the Commonwealth Court of Pennsylvania concluded that it was proper to refrain from removing the same leader from a religious position in the organization. Notably, in the *Poesnecker* case the trial court applied Pennsylvania's nonprofit corporation statutory law, law which Petitioners argue is determinative in the controversy at issue in this case. Thus while the rule of deference may preclude the court from determining who is the proper person to occupy the position of religious authority — the issue that appeared to occupy the attention of Judge Gafni in the hearing to consider whether a preliminary injunction should issue — a court can properly make a determination as to whether actions violated nonprofit corporation law, even removing a leader from a corporate position, if necessary. *See id.* at 475, 631 A.2d at 1099.

Noting the tension in delineating settings where the court must yield to the principle of deference and circumstances where courts are not proscribed from entertaining and resolving disputes which raise civil questions, the Pennsylvania Supreme Court has recognized that error can result from too broad reliance on the deference rule. *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church, supra,* 507 Pa. at 263, 489 A.2d at 1321. The factual context of the dispute at issue is critical.

In these factual circumstances, two principal considerations should have affected the determination of the courts:

First, the action was brought against individuals of the corporation in their individual capacities as well as in their capacities as members of the Board of Trustees concerning acts in contravention of corporate bylaws, practice and custom. It is Petitioners' contention that the suit is governed by the state laws of incorporation and they seek enforcement of bylaws and

application of corporate law principles to resolve issues related to the election and appointment of corporate officers, improper dealings with respect to corporate finances and property, and physical abuse and threats of members. In short, in resolving the instant dispute the court is asked to apply legal principles which are neutral. Indeed, the review of contested corporate actions are found in Pennsylvania's Non-Profit Corporation Act of 1988, 15 Pa. C.S.A. § 5793(a), which allows court determination of the validity of nonprofit corporate action.

The instant case can be distinguished from factual settings where the dispute falls somewhere between the two categories — doctrinal or governed by neutral principles — enunciated in *Middlesex, supra. See, e.g., Atterberry v. Smith,* 104 Pa. Commw. 550, 522 A.2d 683 (1986) (dispute about the authority of the church pastor to act unilaterally to appoint his successor; court concluded that resolution of the ultimate question calls not only for an examination of the form of church government, but also for a determination of what powers the local pastor has with respect to appointment and removal of church officers.) Indeed the Pennsylvania court in *Atterberry, supra,* 104 Pa. Commw. at 555, 522 A.2d at 686, acknowledged that in property controversies involving neutral principles, a civil court is not precluded from scrutinizing religious documents, provided it considers them "in purely secular terms [*i.e.*, does not intrude into impermissible areas of a doctrinal nature]." *Jones v. Wolf, supra,* 443 U.S. at 604, 99 S.Ct. 3025. This approach is consistent with federal law. *Compare id.* (approved neutral-principles analysis of property dispute basing decision on language of deeds, church charter terms and state statutes) with *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church,, supra,* 393 U.S. 440, 89 S.Ct. 601 (1969) (Georgia's implied trust theory used in resolving church property dispute held to be too intrusive a review of tenets and doctrines of church).

Nor is this a case where the subject matter of the dispute is unequivocally at its core an ecclesiastical matter. *E.g., Gundlach v. Laister,* 155 Pa. Commw. 319, 325, 625 A.2d 706, 709 (1993) (admissions decisions about church membership subject to church rules and controlled by the decisions of the appropriate church tribunals in so far as they do not contravene the civil law). *Compare 40th Street & Fairmount Avenue Church of God v. Stover,* 310 F. Supp. 375 (E.D. Pa. 1970) (no jurisdiction to make inquiry as to right of individual minister to conduct services in certain church).

Second, as Judge Gafni acknowledged at the preliminary injunction hearing, notwithstanding the rule of deference, courts can and should become involved when fraud and mismanagement of church assets are involved. Judge Gafni's conclusion that the court lacked jurisdiction to intrude in the church affairs, rendered at the most preliminary stage of this controversy, should not have prevented the court subsequently from reviewing Petitioners' claims of improper corporate conduct or from refocusing the court's attention on charges of fraud and mismanagement after Petitioners' good faith efforts to resolve the dispute informally were rebuffed by Respondents' bad faith actions. *See Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at 713, 96 S. Ct. at 2382, 49 L. Ed. at 151, *citing Gonzalez v. Archbishop,* 280 U.S. 1, 50 S. Ct. 5, 74 L. Ed. 141 (1929) (judicial review of even ecclesiastical determinations my be appropriate in the face of fraud); *see also Gundlach v. Laister, supra,* 155 Pa. Commw. at 325, 625 A.2d at 709 (membership is purely an ecclesiastical matter subject to the church rules and controlled by the decisions of the appropriate church tribunals *in so far as they do not contravene civil law)* (italics added). As this Court recognized in *Serbian Eastern Orthodox Diocese v. Miliovojevich, supra,* 426 U.S. at 711, 96 S. Ct. at 2381, *Gonzalez v. Archbishop, supra,* 280 U.S. at 18, 50 S. Ct. at 8, adverted to the possibility of at least limited civil court review in

cases challenging church decisions as the product of "fraud, collusion or arbitrariness," though no decision by this Court has yet given concrete content to that exception.[4] It is Petitioners' contention that Respondents acted in bad faith by failing to abide by the original agreement made by and between members of the Board of Trustees and acted fraudulently and unlawfully in failing to give proper notice of meetings in connection with election of officers, and preventing Petitioners and their supporters from entering corporate property. Unlike the controversies in *Gonzalez* or *Milivojevich* these are matters which civil courts are fully competent to resolve, utilizing neutral principles, and free of ecclesiastical doctrine.

Even a broad application of the deference rule should not preclude consideration of these contentions. Notwithstanding Judge Gafni's ruling on the preliminary injunction, a court should consider whether there is adequate basis supporting such claims of fraud and mismanagement before rendering a decision to dismiss the Petition to Vacate the Order to Withdraw, Discontinue and End for lack of jurisdiction.

In summary, the Pennsylvania courts' disposition in this case is not dictated by the First Amendment and is inconsistent with the Commonwealth of Pennsylvania's neutral-principle approach to resolving church-related disputes.

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4. Although this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich, supra* rejected an arbitrariness exception, it did not reject the possibility of civil court review on the grounds of fraud or collusion. Notably, this Court was troubled by the clearly ecclesiastical nature of the decision making in that case.

II.

THE PENNSYLVANIA COURT FORECLOSED AN OPPORTUNITY FOR PETITIONERS TO DEMONSTRATE THAT THE MATTERS IN CONTROVERSY WERE MORE CIVIL THAN ECCLESIASTICAL IN NATURE, OR INVOLVED THE KIND OF UNLAWFUL CONDUCT WHICH REQUIRED JUDICIAL INVOLVEMENT, THEREBY VIOLATING PETITIONERS' RIGHT TO DUE PROCESS OF LAW.

Petitioners were neither afforded the opportunity to answer Respondents' Preliminary Objections nor permitted a hearing concerning the substance of the Petition To Vacate the Order to Withdraw, Discontinue and End. Consequently, by granting the Respondents' Preliminary Objections, the court deprived Petitioners of the opportunity to demonstrate that what Judge Gafni feared had come true — fraud and mismanagement by the Respondents had occurred — or to entertain arguments on the merits of the Petitioners' contention that the heart of the controversy was a disagreement resolvable by civil law.

The Pennsylvania Superior Court's reliance on the rule of deference to foreclose judicial involvement without further inquiry beyond Judge Gafni's preliminary ruling is troublesome particularly in light of Pennsylvania's neutral-principle approach to intra-church disputes. Such a narrow interpretation of the court's ability to inquire into allegations of misconduct would have the consequence of permitting officers and agents of churches and other religious institutions to engage in misconduct and hide behind a shield of the First Amendment, victimizing members of congregations who would be without recourse to complain if corporate-owned property were

dissipated or church authority abused. This narrow approach, effectively shutting out Petitioners' opportunity to inform the court how the use of neutral principles can address the wrongs which have occurred, is inconsistent with what Pennsylvania has interpreted as the proper balance of judicial involvement in intra-church disputes discussed, *supra,* and is also at odds with federal case law in related areas of the First Amendment. *See, e.g., Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.,* 477 U.S. 619, 106 S. Ct. 2718, 91 L. Ed. 2d 512 (1986) (not improper for commission to assert jurisdiction over claim that Christian school discriminatorily discharged teacher; commission hearing on charges of sex discrimination not prohibited by First Amendment nor overly intrusive to determine whether religious justification for discharge exists); *General Council on Finance & Administration, United Methodist Church v. California Superior Court,* 439 U.S. 1369, 1371, 99 S. Ct. 35, 37, 58 L. Ed. 2d 77 (1978) (First Amendment concerns which arise in intra-church disputes do not defeat consideration of grounds for asserting jurisdiction by the court over a church which is one of several parties in a dispute). In other contexts, Pennsylvania case law has respected both the interests of preserving First Amendment values and the need to exercise supervision to protect secular interests. For example, courts have recognized the need to assert their authority when religious practices interfere with private relationships in the community; *e.g., Robert Bear v. Reformed Mennonite Church,* 462 Pa. 330, 341 A.2d 105 (1975) (shunning practices interfering with business relationships) or when order is threatened. *See, e.g., Atterberry v. Smith, supra,* 104 Pa. Commw. 550, 552 A.2d 683 (1987). *See also Maryland & Virginia Eldership v. Church of God,* 396 U.S. 367, 90 S. Ct. 499, 24 L. Ed. 2d 582 (1979). Because civil courts should resolve disputes involving churches that do not require a determination of ecclesiastical issues, the threshold question for resolution is whether the dispute at its heart involves questions of civil law. The failure to afford an

opportunity to adjudicate this issue beyond the most preliminary stage unconstitutionally compromises Petitioners' rights.

It is well settled in Pennsylvania that civil courts can resolve disputes involving churches that do not require a determination of ecclesiastical issues, *See Presbytery of Beaver-Butler of United Presbyterian Church v. Middlesex Presbyterian Church, supra,* 507 Pa. at 266, 489 A.2d at 1323 ("In cases where the resolution of a property dispute involves no inquiry into ecclesiastical questions, courts of this Commonwealth are to apply the same principles of law as would be applied to non-religious associations."). Here the issue becomes whether the due process clause of the Fourteenth Amendment requires an opportunity to respond at this stage of the proceedings and in light of facts which have come to light subsequent to the preliminary injunction hearing. *See, e.g., Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 542, 105 S. Ct. 1487, 1493, 84 L. Ed. 2d 494 (1985) (opportunity for employee to present his side of case of obvious value prior to termination); *Matthews v. Eldridge,* 424 U.S. 319, 332, 96 S. Ct. 893, 902, 47 L. Ed. 2d 18 (1976) (fundamental requirement of due process is the opportunity to be heard at meaningful time and meaningful manner). In these circumstances, the failure to afford an opportunity to adjudicate this controversy beyond the most preliminary stage seriously compromises Petitioners' rights.[5]

---

5. *Compare* the courts' reasoning in the following cases: *Burns v. Gadsen State Community College,* 908 F.2d 1512 (11th Cir. 1990) (underscoring the importance in an employment discrimination suit of giving the nonmovant party a meaningful opportunity to respond to a motion for summary judgment); *Bradley v. Pittsburgh Board of Education,* 913 F.2d 1064 (3rd Cir. 1990), *citing Brobst v. Columbus Services International,* 761 F.2d 1148 (3d Cir. 1985), *cert. denied,* 484 U.S. 1043, 108 S. Ct. 777, 98 L. Ed. 2d 863 (1988) (by granting summary judgment pursuant to a motion in limine that

(Cont'd)

CONCLUSION

Petitioners respectfully submit that their Petition For a Writ of Certiorari to the Superior Court of Pennsylvania should be granted.

Respectfully submitted,

LEON W. TUCKER
Counsel of Record
Attorney for Petitioners
Suite 1300, Robinson Building
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Philadelphia, PA 19102
(215) 568-8040

Date: July 30, 1996

(Cont'd)
was based on other grounds district court effectively precluded plaintiffs from marshalling the record evidence that had already been accumulated on this issue and permitted their filing affidavits); *Gay v. Wall*, 761 F.2d 175 (4th Cir. 1985) (in addition to notice, a party must be afforded a reasonable opportunity for discovery before a 12(b)(6) motion may be converted and summary judgment granted).

APPENDIX A — ORDER OF THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT DATED APRIL 30, 1996

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 1004 Eastern District
Allocatur Docket 1995

Petition for Allowance of Appeal from Superior Court

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

v.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, IND., AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

ORDER

PER CURIAM:

AND NOW, this 30th day of April, 1996, the Petition for Allowance of Appeal is hereby DENIED.

Appendix A

TRUE COPY FROM THE RECORD
ATTEST: April 30, 1996

s/ Patricia Johnson
PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

APPENDIX B — JUDGMENT AND JUDGMENT ORDER OF THE SUPERIOR COURT OF PENNSYLVANIA FILED NOVEMBER 20, 1995

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03125 PHILADELPHIA 1994

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

APPELLANTS

V.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

Appeal from the Order Dated August 02, 1994, Docketed August 03, 1994, In the Court of Common Pleas of Philadelphia County, No. 2101 Nov. Term, 1991.

BEFORE: DEL SOLE, BECK, and HUDOCK, JJ.

JUDGMENT

ON CONSIDERATION WHEREOF, *it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* PHILADELPHIA *County be, and the same is hereby* AFFIRMED.

Appendix B

BY THE COURT:

s/ illegible
PROTHONOTARY

Dated: NOVEMBER 20, 1995

Appendix B

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03125 PHILADELPHIA 1994

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

APPELLANTS

V.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

Appeal from the Order Dated August 02, 1994, Docketed August 03, 1994, In the Court of Common Pleas of Philadelphia County, No. 2101 Nov. Term, 1991.

BEFORE: DEL SOLE, BECK, and HUDOCK, JJ.

JUDGMENT ORDER

This matter involves a challenge to church leadership which is doctrinal or ecclesiastical in nature. The action in equity sought a preliminary injunction that was denied based on a lack of jurisdiction. *See Atterberry v. Smith,* 522 A.2d 683 (Pa. Commw. 1987) (matters of church policy are best left to ecclesiastical tribunals). The action was later withdrawn by

plaintiffs' counsel. Plaintiffs then filed a Petition to Vacate the Order to Withdraw, Discontinue and End the action. Preliminary objections to the petition based on lack of jurisdiction were filed and sustained, and this appeal followed. Appellants raise specific procedural challenges, but the critical issue is our courts' lack of jurisdiction in this doctrinal matter. *Gundlach v. Laister,* 625 A.2d 706 (Pa. Commw. 1993); *Orthodox Church of America v. Pavuk,* 538 A.2d 632 (Pa. Commw. 1988). We affirm the lower court's decision on the basis of its opinion.

Order affirmed.

APPENDIX C — OPINION OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED APRIL 8, 1995

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JUNE TERM, 1992

NO. 1887

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, et al

v.

ERIK SHELTON, et al

OPINION

DI BONA, J. DATE: APRIL 8, 1995

This is an appeal taken by the plaintiffs from this Court's Order of August 2, 1994, which denied the plaintiffs' Petition to Vacate the Order to Withdraw, Discontinue and End filed by plaintiffs on November 27, 1991. The procedural history of this case which led up to the denial of the aforesaid motion is relatively simple. Plaintiffs' Complaint in Equity and request for a Preliminary Injunction was filed on November 18, 1991. The Honorable Abraham J. Gafni held a hearing on November 19, 1991. The testimony at the hearing disclosed that the central dispute was one concerning the leadership of the church and the control of the hierarchy of the church organization. Judge Gafni held that there was no jurisdiction of the matter in the courts and that it should be decided by those persons still in authority (namely the Board of Trustees) within the church. No

reconsideration of this decision regarding jurisdiction was ever requested. No appeal of this decision was ever taken. On November 27, 1991, nine days after the Complaint in Equity was filed, the plaintiffs filed an Order to Withdraw, Discontinue and End the case.

On June 16, 1994, six months after the named plaintiff, Roddy J. Nelson Shelton I died, the church filed a Petition to Vacate the previously filed Order to Withdraw, Discontinue and End. The defendants filed a response to the Petition to Vacate in the nature of Preliminary Objections on July 22, 1994. The Preliminary Objections raised the identical issue to that raised before Judge Gafni two and one-half years before, namely the lack of jurisdiction. On Appeal, the plaintiffs assert that this Court erred in a) entering its August 2, 1994, Order before the August 22, 1994, response date due for the answer to defendants' Preliminary Objections, and b) entering an Order ruling on Preliminary Objections since Preliminary Objections are not a proper filing in the instant case. Unfortunately, plaintiffs attempt to create a smokescreen by choosing form over substance.

Rule 1028 of the Pa. Rules of Civil Procedure provide as follows:

> "(a) Preliminary Objections may be filed by any party *to any pleading* and are limited to the following grounds:
>
> (1) *lack of jurisdiction* over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;" (emphasis added).

Appendix C

Defendants' reply to plaintiffs' Petition to Vacate in the form of Preliminary Objections is clearly permitted by the rules of procedure. Next, the plaintiffs contend that the Court should have waited until plaintiffs filed a response to the Preliminary Objections. This position seeks to circumvent the central critical issue in this case which has been present (and ruled upon) since its very inception, the lack of jurisdiction. Plaintiffs seek to vacate an order which withdrew and ended a case in which Judge Gafni ruled there was no jurisdiction. The reason there was no jurisdiction is quite obvious, the courts are without power to decide church disputes which are doctrinal or ecclesiastical in nature. In *Atterberry v. Smith*, __ Pa. Cmwlth. __, 522 A.2d 683 (1987) it was held that:

> "In setting forth the law to be employed where the issue to be settled is a dispute involving a church our State Supreme Court has recently explained that a threshold determination must be made as to whether the dispute is one which is doctrinal in nature or instead involves only questions of civil law. *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317, *cert. denied*, __ U.S. __, 106 S. Ct. 198, 88 L. Ed. 2d 167 (1985). The *Middlesex* Court recognized that where the dispute involves principles of civil law, such as ownership of property, it can be solved 'without intruding into the sacred precincts' by employing neutral principles of law. *Id.* at 262, 489 A.2d at 1320-21. Where, however, the resolution of the issue involves questions of discipline,

faith, ecclesiastical rule, custom, or law, a civil court must defer to the highest church judicatory to which the question has been carried. *Id.* at 259, 489 A.2d at 1319 (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872). *See also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 96 S. Ct. 2372, 2382, 49 L. Ed. 2d 151 (1976) (adding to the list of areas foreclosed from civil court intrusion of church's 'internal organization'). The wisdom of this 'deference rule' as it came to be known was recognized by the *Middlesex* Court when it wrote:

> [T]he right to practice one's belief and worship as one chooses is so deep a root of our constitutional culture that a court, even one with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life. When Caesar enters the Temple to decide what the Temple believes, he can leave behind only his own views. The view of a court as to who are heretics among warring sects is worth nothing, and must count as nothing if our cherished diversity of religious views is to prevail.

Id. 507 Pa. at 260, 489 A.2d at 1320.

Appendix C

> As instructed by *Middlesex*, our initial task must be to determine whether the instant dispute is doctrinal or civil in nature. Although the trial court was not asked to decide a pure question of belief or faith, neither was the question one concerning a matter which is totally civil in nature, such as the ownership of property. Instead the issue seems to fall somewhere between the two categories enunciated in *Middlesex*. Resolution of the ultimate question calls not only for an examination of the form of church government, but also for a determination of whether Reverend Whyte is in fact the local pastor and what, if any, powers the local pastor has with respect to appointment and removal of church officers. In our view these latter questions in particular are more akin to doctrinal questions than to civil ones. Our determination that the instant dispute is primarily doctrinal is based upon *Watson* as well as one of its more recent progeny, *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), both of which indicate that matters of church policy are best left to ecclesiastical tribunals."

522 A.2d 683 at 685-686.

Clearly, the appointment and removal of church officers is primarily doctrinal. See also *Orthodox Church of America v. Pavuk*, __ Pa. Cmwlth. __, 538 A.2d 632 (1988) and *Gundlach v. Laister*, __ Pa. Cmwlth. __, 625 A.2d 706 (1993).

Appendix C

Judge Gafni had made the preliminary determination that the substantive dispute concerning Rev. Shelton's ascendancy to the position of General Overseer was doctrinal in nature and, therefore, the deference rule was applied. In the two and one-half year interim, nothing had changed which would warrant departing from Judge Gafni's determination that this Court lacked jurisdiction over the subject matter of this suit. Therefore, the Petition to Vacate was denied. The Order of this court dated August 2, 1994, should stand accordingly.

s/ Di Bona
ALFRED J. DI BONA, JR.
J.

APPENDIX D — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED NOVEMBER 20, 1991

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Attorneys for Plaintiffs

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, and RODDY J. NELSON SHELTON I, General Overseer and RODDY J. NELSON SHELTON, II, Trustee and FRANK MATTHEWS, Trustee

PLAINTIFFS

vs.

ERIK SHELTON and KENNETH SHELTON and ALONZO WOODWARD REAGAN and FINCOURT B. SHELTON and JOHN CARLTON THOMAS and DANIEL BOWENS and

Appendix D

GEORGE BROWN INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

DEFENDANTS

ORDER

AND NOW, this 20th day of November, 1991, after hearing, it is ORDERED and DECREED that Plaintiff's Petition for Preliminary Or Special Injunction is denied as the Court has determined that it is without jurisdiction to involve itself in what it perceives to be a doctrinal matter, and it is hereby ORDERED and DECREED that the duly authorized officer shall be prevented from participating in their administrative duties and responsibilities.

BY THE COURT:

s/ Abraham J. Gafni
ABRAHAM J. GAFNI, J.

APPENDIX E — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED NOVEMBER 17, 1991

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COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

____ Term
No. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC. and RODDY J. NELSON SHELTON I, General Overseer and RODDY J. NELSON SHELTON, II, Trustee and FRANK MATTHEWS, Trustee

PLAINTIFFS

vs.

ERIK SHELTON and KENNETH SHELTON and ALONZO WOODWARD REAGAN and FINCOURT B. SHELTON and JOHN CARLTON THOMAS and DANIEL BOWENS and GEORGE BROWN INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

DEFENDANTS

Appendix E

ORDER

AND NOW, this 17th day of November, 1991, upon consideration of the verified Complaint in Equity, and Motion of Plaintiffs and having determined that:

1. Plaintiffs and members of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc., will suffer permanent and irreparable harm and loss if Defendants, individually, collectively and in their capacity as Board of the Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., are permitted to interfere with the religious worship services and or business and corporate affairs of the membership of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc., located at 22nd & Bainbridge Streets, Philadelphia, Pennsylvania, at all times hereafter.

2. Irreparable and permanent harm will result if the Defendants, as set forth in the caption, are permitted to maintain possession of church property taken after October 13, 1991, of any kind or to engage in any conduct which would promote discord or dissention in the business and affairs of the Church including, but not limited to entering onto Church property which will in and of itself interfere, interrupt, agitate and disrupt the religious and other legitimate affairs of the Church.

3. Plaintiffs and the members of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., will suffer irreparable harm and loss if Defendants do not return all keys and property to Plaintiff, Roddy J. Nelson Shelton I, General Overseer, or his designee and account for all finances and other property possessed by them and under their control as of October 13, 1991.

Appendix E

4. Plaintiffs has no adequate remedy at law.

5. Greater injury will be inflicted upon Plaintiffs by the denial of a temporary injunctive relief than would be inflicted upon Defendant by the granting of such relief.

IT IS HEREBY ORDERED AND DECREED THAT:

1. A restraining Order be issued upon security being entered by Plaintiffs in the amount of $ *security waived.*

2. Upon the entry of said security, if any, Defendants, each and all of them, individually, collectively and as the Trustee Board, are enjoined and restrained until hearing on this matter and thereafter until further Order of this Court, from interfering with the business and religious worship services of the members of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., at all times subsequent hereto.

3. Interfering with the business and corporate affairs of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., at all times subsequent hereto.

4. Interfering with the special affairs of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., at all times subsequent hereto.

5. Interfering with the Plaintiffs actions as General Overseer, of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc.

6. Entering upon Church property for any purpose whatsoever but especially for interfering, interrupting,

disruptive conduct or initiating or agitating any dissention or disruptive conduct on Church property.

7. Defendants, each and all of them, collectively, individually, and in their capacity as Trustees, shall immediately deliver all keys and property of Church of the Lord Jesus Christ of the Apostolic Faith, Inc., in their possession to the Plaintiff or his designee.

8. Defendants, each and all of them, collectively, and as the Board of Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., shall within twenty (20) days hereof, submit a written account for all finances and other property which came into their possession and under their possession and control as of October 13, 1991.

9. This Order shall remain in full force and effect until such time as this Court orders otherwise.

10. A Rule be issued to Defendants to Show Cause why a Preliminary Injunction should not be issued.

BY THE COURT:

s/ Di Bona

J.

APPENDIX F — TRANSCRIPT OF PROCEEDINGS DATED NOVEMBER 20, 1991

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL DISTRICT OF PENNSYLVANIA

CIVIL TRIAL DIVISION

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., et al.

v.

ERIK SHELTON, et al.

Room 426, City Hall
Philadelphia, Pennsylvania

November 20, 1991

BEFORE: HONORABLE ABRAHAM J. GAFNI, J.

APPEARANCES:

LEON W. TUCKER, ESQUIRE
JOHN PAUL SIMKINS, ESQUIRE
Attorneys for Plaintiffs

FINCOURT B. SHELTON, ESQUIRE
Attorney for Defendants

Appendix F

[2] THE COURT: As counsel pointed out to me, we are here on a request for a preliminary injunction.

While much is alleged in the motion, essentially the issue that is before me here is whether Roddy J. Nelson Shelton should be permitted to assume the position of General Overseer and this by reason of proposed documents which would suggest that he was to assume that position by reason of the passing of the prior General Overseer.

During the break that we had I had an opportunity to review the many documents which have been submitted to me by counsel. And one of the reasons that I did that was for the purpose of determining exactly who and what is the General Overseer, what position does that overseer hold, what are the responsibilities of that overseer, and what authority may that overseer exercise.

The purpose of my so doing was because of the argument, which I believe both counsel have pretty much agreed to, that the Court may not involve itself in matters involving the interpretation of ecclesiastical [3] or canon law or doctrine.

On the other hand, courts may involve themselves in matters relating to what might be called civil property rights and things of that sort not otherwise involved in religious doctrine and practice.

In reviewing the by-laws and rules, and there has been some dispute as to what certain rules or by-laws or documents were that were adopted, there are certain documents which everybody agrees were adopted. And these discuss the responsibility and the authority of the General Overseer.

Appendix F

And it would appear to this Court that the General Overseer has virtually unlimited, unbridled and unqualified authority to override the action of virtually any other body within the church.

For example, under Article X, "The General Overseer shall have full authority to determine any question concerning parliamentary procedures and there shall be no appeal from the decision of the General Overseer."

Further in that article, "The [4] General Overseer shall be the full arbitrator on all matters affecting the interpretation doctrine applicable to The Church of the Lord Jesus Christ."

Continuing on to Article XI we find that any amendments to the by-laws or the rules or regulations must first "be submitted to the General Overseer who's approval is a condition presented to their submission to the General Assembly."

In addition to that there is a provision for cases of insubordination and grievance in which there is a committee composed of the General Overseer or nominee, the state elder and another man of good report among the saints chosen by the General Overseer but ultimately the General Overseer has full authority to suspend or expel any person from the General Assembly.

The overseer appoints investigative committees.

Final appeals are taken to the overseer.

The overseer has the power to suspend or expel any person so tried from the [5] General Assembly of the church or from any local assembly thereof.

Appendix F

In fiscal matters and in general management the overseer is always a trustee and the president of the board. But no member may be elected to be a trustee unless that person is first approved and nominated by the General Overseer.

And finally if there is any other conflict in the rules or regulations or by-laws the General Overseer will resolve those issues.

Under those circumstances the question is then presented to the Court as to whether a court, civil court, a court of the Commonwealth of Pennsylvania should involve itself in the question of who should be the General Overseer of this church, and whether if a court so involves itself it will be involving itself strictly in an interpretation of the by-laws, whether it will be involving itself in the matters of civil rights and responsibilities or whether it will be involving itself in ecclesiastical or religious doctrine and practice.

[6] In the opinion of the Court, having reviewed the various items which I have just recited here together with the other documents which have been presented to me, I am satisfied that these documents, at least as I understand them, would not allow this Court to distinguish between the responsibilities of the General Overseer insofar as they relate to the ecclesiastical and religious practice and as they relate to the civil practice.

I note further that in the document which was attached as Exhibit C to the petition and complaint, which was dated 1977, 30 September, there is reference to a direct succession. And the plaintiff Roddy J. Nelson is designated as the person in direct succession.

Appendix F

There are provisos in that respect, however, and they relate to providing that all persons named in this document, and that would of course include the aforesaid individual, are in good fellowship of The Church of the Lord Jesus Christ and the Royal Apostolic House of Shelton and as successor, Roddy J. Nelton Shelton.

[7] In other words, there are provisos insofar as they relate to this even if the person has been serving as General Secretary.

This Court is satisfied that were it to make a determination as to who should serve as General Overseer, in light of the very broad powers of the General Overseer it would be deciding not only how the business of the church should be managed, its money and its real estate and whatever other physical assets it may have in this world but it would essentially be determining who and how the religious and ecclesiastical doctrine and function of the church should be followed.

It's the opinion of the Court that at least at this point, at least on a preliminary injunction it is without authority to act in this regard.

For this Court to decide who will be the General Overseer would essentially be to determine who will be the individual who will decide all religious doctrine for this church. This the Court will not do.

The Court is particularly [8] reluctant to do so when we recognize that the person ultimately assigned and appointed as General Overseer would have the unbridled and unlimited right to expel from the church anyone with whom that individual disagrees.

Appendix F

Under such circumstances it is the belief of the Court that the matter should be returned to the church members and to the duly designated bodies which are currently in effect.

That is not to say that the Court may not ultimately find itself involved in this matter.

It well may be, and I'm sure counsel are aware of this, that cases do indicate that if there are suggestions of fraud, mismanagement or other matters the Court may involve itself in the management of the business or practices or the management of the assets of the corporation, and this it may do.

However, at this stage, at this time it will be necessary for this Court to determine that it has no jurisdiction.

Under these circumstances the [9] matter can return then to those people who are still in authority, which as I understand in a nonprofit corporation will remain the Board of Trustees who may then act accordingly.

The individual members of the church may seek such avenues of appeal within the church as they deem appropriate. They may do as appropriate within the church.

And, of course, if any of the exceptions whereby the Court may intrude in the affairs of the church come into play, this Court stands ready to involve itself.

At this point, however, it is very apparent that there is a serious tribunal dispute with respect to who is authorized to act as the religious leader for a church. And this Court is loathe to engage in such an activity.

Under such circumstances the preliminary objection requesting that this Court determine that the Court is without jurisdiction to entertain this motion at least in its current term posture will be allowed and the request for a preliminary injunction alone will be dismissed.

[10] Of course that does not dismiss the complaint. The matter still continues and can be brought up to the legal limited areas to which I made reference.

Is there anything further that either counsel wishes to say to me at this time?

MR. TUCKER: Yes, Your Honor.

It appears that the issue before the Court is not so much who should be the General Overseer but the procedure under which the person is to be the General Overseer.

The Court having ruled I would simply ask the Court for a trial date on the complaint.

MR. SHELTON: Your Honor, I've got until December 18 under the rules to answer their complaint. I have not filed an answer. I will file an answer on or before December 18 as required under the rules.

THE COURT: You may do so and I will give you that time to do so.

Let me, however, advise everyone and warn everyone. As I indicated, [11] the issue as presented to me was really who was going to take over the management right now, and once I

determined that the General Overseer is so integrally involved in the management of the religious aspects of the organization I was not prepared to do so.

However, I want to be very careful and caution everybody that I have not said that the courts will not otherwise be involved. I did indicate that the courts can do become involved.

If this Court has brought to its attention any suggestion that there is mismanagement or fraud either in the selection of officials or in the management of the assets, any one member of the organization has the right to say that my board of trustees or my officers are doing wrong.

And I want to tell you that if that occurs you will not have difficulty in asserting jurisdiction in the matter.

May I also add that one of the problems that we have in this case, unlike many of the other cases to which both counsel made reference, is that in most instances what [12] you had was a local authority, a local church where there wasn't in existence a higher authority because they were part of a larger hierarchy.

In this case we are actually dealing with the top of the hierarchy so there is no higher group.

When you have that situation the general practice is to go to the group — and everybody makes reference to the articles of incorporation. And I believe I'm also somewhat familiar with both corporate and noncorporate law.

And ultimately the people who are going to have to decide this are the Board of Trustees. And if the Board of Trustees

cannot decide it because there is some problem it may well be that the members are going to have to decide it also. And they will have that opportunity.

But I would caution everybody that this matter may not be over today. And I caution everybody to be very careful and very circumspect because obviously whoever has authority to do anything will be watched very [13] closely by those who do not. Very closely.

And I caution you that we are going to still be here and I'm going to be here or another judge will oversee the matter.

That having been said, I believe that this matter is now ended.

– – –

(Proceedings concluded at 3:30 p.m.)

Appendix F

[14] CERTIFICATE

I hereby certify that the testimony and the proceedings in the aforegoing matter are contained fully and accurately in the stenographic notes taken by me and that the copy is a true and correct transcript of the same.

s/ Katherine L. Hirst
KATHERINE L. HIRST, R.P.R.
Official Court Reporter
Court of Common Pleas
Philadelphia, Pennsylvania

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying Shorthand Reporter.

APPENDIX G — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED AUGUST 2, 1994

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., ET AL

v.

ERIK SHELTON, ET AL

ORDER

AND NOW, this 2nd day of August, 1994, upon consideration of plaintiff's Petition to Vacate the Order to Withdraw, Discontinue and End filed on November 27, 1991, and upon consideration of defendant's response thereto in the nature of Preliminary Objections, it is hereby ORDERED AND DECREED that plaintiff's Petition be and is hereby denied and that the order to withdraw, discontinue and end shall remain in full force and effect.

BY THE COURT:

s/ Di Bona
ALFRED J. DI BONA, JR.
J.

No. 96-154

(2)

Supreme Court, U.S.
F I L E D
AUG 29 1996
CLERK

In The

Supreme Court of the United States

October Term, 1995

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

vs.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY, AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

On Petition for a Writ of Certiorari to the Superior Court of Pennsylvania

RESPONDENTS' BRIEF IN OPPOSITION

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65 pp

LIST OF INTERESTED PARTIES

The Petitioners are Roddy J. Nelson Shelton II; Frank Matthews; Roddy J. Nelson Shelton I (Deceased: January 17, 1994)

The Respondents are correctly identified in the caption except Fincourt B. Shelton is not joined as a party in this Brief in Opposition and in the caption erroneously listed they are joined as individuals and trustees for the Church of the Lord Jesus Christ of the Apostolic, Faith, Inc.[1] John R. Brown is counsel of record for all of the Respondents with the exception of Fincourt B. Shelton.

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1. By order of the court below, the complaint was amended to reflect in all instances Church of the Lord Jesus Christ of the Apostolic Faith in the place of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc. (Appendix I p. 26a).

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STATEMENT OF JURISDICTION

This Court cannot properly exercise jurisdiction over this case pursuant to 28 U.S.C. § 1257(a). Many of the questions presented for review in the petition were never presented to the Pennsylvania courts. These newly presented arguments may not properly be considered. Further, the issue presented is precluded from judicial review by the First Amendment to the United States Constitution.

CONSTITUTIONAL PROVISION AND RULE INVOLVED

The First Amendment provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the people peaceably to assemble, and to petition the government for a redress of grievances.

Pa. R.C.P. 1032(b) provides:

> Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, the court shall order that the action be transferred to a court of the Commonwealth which has jurisdiction or that the indispensable party be joined, but if that is not possible, then it shall dismiss the action.

STATEMENT OF THE CASE

Respondents respectfully oppose the petition to writ of certiorari, which assails the Pennsylvania courts for the proper application of the First Amendment to an ecclesiastical controversy. The Church of the Lord Jesus Christ of the Apostolic Faith operated for approximately 30 years prior to establishing a corporate entity in 1947, in the Commonwealth of Pennsylvania, namely, The Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., the members and officers of the corporation being the members of the Board of Trustees. The founder of the Church organization, Bishop Sherrod C. Johnson, was the spiritual leader of the organization, and one of the original incorporators. He was Pastor and General Overseer of the Church, and President of the Board of Trustees until his death in 1961. Under his leadership the membership and number of Churches thrived. The Headquarters for the organization is located at 22nd and Bainbridge Streets, Philadelphia, Pennsylvania.

Subsequent to the death of Bishop Johnson, the Board of Trustees elected his successor, S. McDowell Shelton, later that year to the position of Bishop, General Overseer and President of the Board of Trustees, said election was duly ratified by the General Assembly.[2] The religious organization is hierarchical in nature with the local Churches contained in state groups which are part of districts with district supervisors reporting to Headquarter's Church. The Bishop is always the President of the Board of Trustees and he is both the spiritual and secular leader of the organization.

---

2. Contrary to the Petitioners unfounded and misleading assertion that there was ascension to the office of President upon the death of Bishop Johnson, the election and ratification process as specified in the by-laws is neither automatic nor without satisfaction of religious provisos (Petitioners severelydistort and misrepresent the content of the provisions of the by-laws).

On or about November 18, 1991, a Complaint in Equity and a Motion for Preliminary Injunction was commenced by Petitioners which was captioned *The Church of the Lord Jesus Christ of the Apostolic Faith, Inc., et al. v. Erik and Kenneth Shelton et al.*, filed in the Court of Common Pleas, Philadelphia County and docketed at November Term 1991, No. 2101. The individuals instituting that action, Roddy J. Nelson Shelton I, Roddy J. Nelson Shelton II and Frank Matthews, three members of the Board of Trustees of the Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., sought to bar the authority of the remainder of the Board of Trustees (the highest Church judicatory) from administering the affairs of the Church, in an attempt to gain control of the Church organization via court intervention.

The Board of Trustees of the hierarchical Church organization was in the process of determining who should be recommended to the General Assembly as its candidate for the next spiritual leader, *i.e.*, Bishop and General Overseer, subsequent to the death of Bishop S. McDowell Shelton (October 13, 1991). The Board of Trustees decided to install interim Co-Presidents of the Board, R. J. N. Shelton I a/k/a Elder Nehemiah and A. W. S. Reagan a/k/a Elder Marcus, until a consensus could be reached in regard to the position of Bishop and General Overseer of the Church organization.

R. J. N. Shelton I claimed he was the rightful successor to the Bishop and General Overseer as Secretary General of the Church but found his claim to even that position (Secretary General) fraught with problems and seriously disputed based on a number of issues which included: *lack of good "spiritual" standing with the Church organization;* lack of nomination to the position by the Bishop and General Overseer; lack of ratification to that position by the General Assembly; and claims that others held that position. Petitioners, infuriated that there was opposition to

R. J. N. Shelton I, instituted legal action against the remaining members of the Board of Trustees in the hope the court would intervene.

The complaint alleged in large part that the Respondents interfered with religious worship; business and corporate affairs of the Church; interfered with Petitioner R. J. N. Shelton I ascension to the role of Bishop or leader; causing loss to Church property and disruption within the Church.

Petitioners also alleged that the membership of the Church, and funds and assets of the Church would be dissipated if the Respondents, individually and collectively, were not enjoined from interfering with the spiritual business and financial affairs of the Church.

The Petitioners' Complaint in Equity and Motion for Preliminary Injunction, which mirrored each other in content, sought to bar the authority of the Respondents to administer the affairs of the Church and to gain control of the funds and assets of the Church.

On or about November 20, 1991, the Honorable Abraham J. Gafni, Judge of the Court of Common Pleas, held a hearing on Petitioner's Motion for a Preliminary Injunction. During the November 20th hearing, the court received evidence on both of the major issues raised in that aforementioned complaint, to wit: (1) the Church finances and (2) who should be in control of the Church.

At the conclusion of said hearing, the court rendered a Bench Opinion finding that the court lacked jurisdiction of the matters litigated therein, due to the fact that resolving said issues would involve the court in the interpretation of ecclesiastical doctrine and/or canon law. In the Bench Opinion, the court

indicated that it may only have jurisdiction to entertain allegations of fraud with respect to the management of the property of the Church. However, having made the finding, the court ordered that it had no jurisdiction and ordered that the matter " . . . return . . . to those people who are still in authority . . . the Board of Trustees who may then act accordingly." The court further stated that the individual members of the church may seek avenues of appeal within the Church as they deem appropriate. (Appendix K p. 34a). While delivering its Bench Opinion as described above, the court stated: "That having been said, I believe that this matter is now ended." (Appendix K p. 37a).

The court entered an order dated November 20, 1991 unequivocably stating, "the Court has determined that it is without jurisdiction to involve itself in what it perceives to be a doctrinal matter." (Appendix J p. 28a). On or about November 21, 1991, the court entered an Order removing any reference to the Church corporation from the instant case. (Appendix I p.26a). Petitioners through counsel, notified Respondents of their filing of the Order to Withdraw, Discontinue and End, and of their intention to resolve this matter within the Church as opposed to the courts. (Appendix H p. 25a).

Neither of these court orders were appealed by any party, nor did any party seek reconsideration of said orders. On November 27, 1991, within nine days of the filing of their Complaint in Equity, the Petitioners' filed an Order to Withdraw, Discontinue and End, which was filed of record. The order of Judge Gafni on November 20, 1991 constituted a binding decision on the issue of jurisdiction and on the merits of this litigation. (Appendix H pp. 23a-24a).

In or about December 1991, a meeting of the Board of Trustees and a special general business session of the Trustees of

the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc., was called in accordance with the by-laws of the Church organization, contrary to Petitioners' assertion. (Appendix G p. 22a).

During the aforementioned Board of Trustees meeting (which Petitioners participated in) and a special meeting of the General Assembly, an election of trustees was held during which Petitioners were removed from their positions on the Board of Trustees. A true and correct copy of the resolution of that meeting is attached hereto as Appendix F pp. 18a-19a.

Subsequent to the election, on numerous occasions, Church services with approximately four thousand members in attendance were disrupted by a small number (twenty-five to fifty) of Petitioners' supporters, which resulted in their lawful removal by the Sergeant-at-Arms from the premises. The disrupters filed criminal charges against the Sergeant-at-Arms, which were found to be without merit, all resulting in not guilty verdicts.

Petitioners left the Church organization with their supporters and formed another church organization under the leadership of R. J. N. Shelton I, having no relationship to or with this Church organization since on or about March 1, 1992.

Subsequent to December of 1991, Fincourt B. Shelton was removed from the Board of Trustees in accordance with the by-laws of the Church organization.

On or about May 23, 1992, the Board of Trustees voted unanimously to install Kenneth N. Shelton in the position of Bishop and General Overseer, which was duly ratified by the General Assembly in or about September 1992. (Appendix E pp. 12a-13a). The Church continues to operate in a peaceful productive manner.

On or about January 17, 1994, R. J. N. Shelton I deceased. Subsequent to his death, his Church (an independent church founded in 1992, located in Darby, Pennsylvania) in a tumultuous fragmentation, split into three or more factions. One of these factions, some six months after his death, and more than two and a half years after the filing of the Order to Withdraw, Discontinue and End, filed a motion to vacate the aforementioned order, to which Respondents responded. The Motion to Vacate was denied. (Appendix C p. 11a). Petitioners sought reconsideration without success and subsequently appealed to the Superior Court which affirmed the decision of the lower court; subsequently Petitioners filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, which was denied. (Appendix A pp. 1a-2a). Now Petitioners have submitted a petition to this Honorable Court for a writ of certiorari to the Superior Court of Pennsylvania.

REASONS FOR DENYING THE WRIT

I.

THE FIRST AMENDMENT THROUGH THE APPLICATION OF THE DEFERENCE RULE AND ENTANGLEMENT DOCTRINE PRECLUDES THE COURT'S INVOLVEMENT IN APPOINTING THE SPIRITUAL LEADER OF A HIERARCHICAL CHURCH ORGANIZATION.

Petitioners desire the Court to place R. J. N. Shelton I in the position of spiritual leader of the Church organization by court order. The ramification of their prayer for relief is one which invites the Court into an area that is clearly ecclesiastical in nature. The First Amendment, the Deference Rule and Entanglement Doctrine are clear in regard to the recognition of the "Separation of Church and State" and appropriate parameters

of court involvement in church affairs. Moreover, there is a further apparent distinction made in case law in regard to various situations, which include congregational organizations as opposed to hierarchical organizations. Hierarchical church determinations have historically been deferred to by the courts on a variety of matters, congregational church organization decisions are deemed more reviewable. The courts have long accepted decisions of church judicatories as binding in reference to ecclesiastical matters and in fact refuse to intrude into that doctrinal realm, understanding constitutional prohibitions. Such is the crux of the case at bar.

One of the cornerstones in the foundation of our government is the "Free Exercise of Religion." This Honorable Court has historically recognized the "Separation of Church and State" through interpretation of the First Amendment. In fact, this is the very foundation for the establishment of the "Deference Rule," which holds when "questions of discipline, or of faith or ecclesiastical rule, custom or law have been decided by the highest . . . church judicatories . . . the legal tribunals must accept such decisions as final." *Watson v. Jones*, 80 U.S. 679 (1871).

The First Amendment provides the foundation for the "Entanglement Doctrine" which prohibits civil courts from lending their power to one side of a church dispute. Accordingly, the Supreme Court has refrained from intervention into internal church disputes. *Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969).

In 1976, the Supreme Court upheld the division between civil and religious affairs in *Serbian Eastern Orthodox Diocese v. Milivejevich*, 426 U.S. 696 (1976) by stating, "religious controversies are not generally the proper subject of civil court inquire, and a civil court must accept the ecclesiastical decisions of church tribunals as it finds them . . . [I]t is the essence of

religious faith that ecclesiastical decisions are reached and are tc be accepted as matters of faith whether or not rational or measurable by objective criteria. Constitutional concepts of due process, involving secular notions of 'fundamental fairness' or impermissible objectives, are therefore hardly relevant to such matters of ecclesiastical cognizance." *Id.* at 714-15.

The deference rule has been upheld even when substantial rights have been adversely affected. When alleged that the national religious government of their denomination had employed racially discriminatory practices, which resulted in a violation of their First and Fourteenth Amendment protections, which are clearly issues which involve the freedom to determine religious beliefs, denial of the right to use property without due process and equal protection are paramount areas in our democracy, the court held, "[when deciding] what should be the orthodoxy and what is fair in the policy making procedures of a religious denomination . . . the First Amendment precludes this court from making a judgment when those issues are solely intertwined within private religious denominational practices . . . [moreover] the courts cannot adjudicate . . . religious policy and give relief to either group." *40th Street and Fairmount Ave. Church of God v. Stover,* 316 F. Supp. 375 (1970).

A similar result was reached in *Congregation Beth Yitzhok v. Briskman,* 566 F. Supp. 555 (E.D.N.Y.1983), in which one religious faction claimed another was embezzling funds from the church membership. With the central issue of the dispute being whether Petitioners' or Respondents' leader was the rightful successor to the Skolyer Rebbe [the church leader], the court held that it was precluded from intervening into the decision of who should be spiritual leader, identifying the issue as a purely ecclesiastical question by the application of the deference rule.

In the instant case, the central issue is whether Petitioners'

or Respondents' leader is the rightful successor to the Bishop and General Overseeer (the leader of the church organization). The deference and entanglement doctrines provide that civil courts must refrain themselves from intervening in internal church matters.

Petitioners contend the "neutral principles of law" approach may be used by the court to determine matters which are not *doctrinal* in nature citing, *Presbyterian of Beaver Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian, infra,* and this approach may be used for property disputes that are not subsidiary to doctrinal or ecclesiastical issues. The salient facts of that case were, the Middlesex Presbyterian Church (Middlesex) was a Pennsylvania non-profit organization that participated in the Presbyterian Church of the United States of America from its inception. In 1958, an organizational merger occurred and Middlesex become a member church under the United Presbyterian Church in the United States of America (UPCUSA). Middlesex disaffiliated themselves from UPCUSA in 1981, they amended their corporate charter by a vote of 125 to 31. Litigation over control of church property and assets ensued. The constitution of UPCUSA did not contain an amendment creating a trust in favor of the national denomination until after Middlesex elected to disaffiliate.

The Pennsylvania court examined both, the Deference Rule and neutral principles of law approach, when it reasoned:

> All disputes among members of a congregation, however, are not doctrinal disputes. Some are simply disputes as to meaning of agreements on wills, trusts, contracts, and property ownership. These disputes are questions of civil law and are not

> predicated on any religious doctrine. While it is true that parties may agree to settle their disputes according to their own agreed fashion, the questions of what they agreed to, or whether they agreed at at all, are not doctrinal and can be solved without intruding into the sacred precincts.

Presbyterian of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian, 489 A.2d 1317 at 1321 (Pa. 1985), *cert. denied*, 474 U. S. 887 (1985). The Pennsylvania Supreme Court clearly emphasized that this was purely an issue of property control and in no way involved resolving doctrinal issues. Clearly distinguishable from the case at bar, which does not involve a local church holding title to property, seceding from a larger organization. The emphasis placed by the court on a lack of doctrinal issues clearly indicate if such were the case, as in the case at bar, the deference rule would apply. Further, the court's order of November 20, 1991 unequivocably states, "the Court has determined that it is without jurisdiction to involve itself in what it perceives to be a doctrinal matter." (Appendix J pp. 28a).

The Petitioners rely erroneously on case law which provides no support for their position, and confuse the areas protected by the "Deference Rule" and that which facilitates judicial involvement by the application of "neutral principals of law". The area Petitioners seek court intervention into is the ecclesiastical and doctrinal province of the hierarchical church organization. The case law cited by Petitioners in reference to bolstering their position, has been misinterpreted, misquoted, misapplied and are easily distinguishable from the instant matter. Petitioners assert that *Robert Bear v. Reformed Mennonite Church et al.*, 341 A.2d 105 (1975), was a matter in which "the Court ruled on shunning practices of the religious

organization as an interference with business relationships which Courts might have authority to regulate". In actuality, the case involved a demurrer to a complaint filed by Mr. Bear, which consisted of a two line preliminary objection, for failure to state a cause of action. The demurrer was sustained and was appealed. On appeal, the court held that where a doubt exists as to whether the demurrer should be sustained, this should be resolved in favor of overruling it. Therefore, the matter was remanded. Further cases were cited which dealt with congregational organizations, as opposed to hierarchical organizations, *Nagle v. Miller,* 275 Pa. 157 (1922) and *Schlichter v. Keiter,* 156 Pa. 119 (1893), which would necessarily affect the proper application of the "Deference Rule".

The holding and rationale of the *Presbytery of Beaver Butler of the United Presbyterian Church in the United States of America et al. v. Middlesex Presbyterian Church et al., supra,* was severely misrepresented in regard to the case at bar. That case considered when neutral principles of law were properly applicable in non-doctrinal matters. Similarly *Gonzalez v. Roman Catholic Archbishop of Manila,* 280 U.S. 1 (1929), held such an approach is appropriate when the substance of the case is a property issue. *Orthodox Church of America v. Thomas Pavak,* 538 A.2d 632 (1988), is another case clearly distinguishable from the instant matter, involving a local church, once a separate entity, which joined a national church organization and then seceded from that association. A case involving an incorporated fraternity, *Poesnecker v. Ricchio,* 158 Pa. Commw. 459 (1993), *cert. denied,* 115 S. Ct. 727 (1995) is easily distinguishable from the instant case, in that, this matter did not involve a church organization. Other cases relied on involved governmental units or statutes which infringed on an individual's religious practices, which are clearly distinguishable from the case for the instant matter, *Sherbert v. Verner,* 374 U.S. 398 (1963); *Braunfeld v. Brown,* 336 U.S. 599

(1961), *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in North America*, 344 U.S. 94 (1952), is also distinguishable based on the extension of the deference rule to acts of state legislatures.

Petitioners erroneously contend this is simply a corporate matter, and ask the Court to review by-laws and articles of incorporation as the Court would do in any corporate matter. However, it is clear that the Church corporation is not a party to this litigation, in that, "The Trustees of the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith, Inc." is not listed as a party in the caption of Petitioners' Complaint, and the Church corporation was specifically excluded from the action by court order dated November 21, 1991. (Appendix I p. 26a). Such being the case, Respondents maintain that no further response is required to the balance of Petitioners' assertions regarding corporate claims. However, if this Court deems further response appropriate.

The court below has considered corporate documents, and articles of incorporation, by-laws and remarked:

> In reviewing the by-laws and rules, and there has been some dispute as to what certain rules or by-laws or documents that were adopted, there are certain documents which everybody agrees were adopted. And these discuss the responsibility and the authority of the General Overseer.
>
> And it would appear to this Court that the General Overseer has virtually unlimited, unbridled and unqualified authority to override the action of virtually any other body within the church.

For example, under Article X, "The General Overseer shall have full authority to determine any question concerning parliamentary procedures and there shall be no appeal from the decision of the General Overseer."

Further in article, that General Overseer shall be the full arbitrator on all matters affecting. "The interpretation of doctrine applicable to The Church of the Lord Jesus Christ."

Continuing on to Article XI we find that any amendments to the by-laws or the rules or regulations must first "be submitted to the General Overseer who's approval is a condition presented [sic] to their submission to the General Assembly."

In addition to that there is a provision for cases of insubordination and grievance in which there is a committee composed of the General Overseer or nominee, the state elder and another man of good report among the saints chosen by the General Overseer but ultimately the General Overseer has full authority to suspend or expel any person from the General Assembly.

The Overseer appoints investigative committees.

Final appeals are taken to the Overseer.

> The Overseer has the power to suspend or expel any person so tried from the General Assembly of the church or from any local assembly thereof.
>
> In fiscal matters and in general management the Overseer is always a trustee and the president of the board. But no member may be elected to be a trustee unless that person is first approved and nominated by the General Overseer.
>
> And finally if there is any other conflict in the rules or regulations or by-laws the General Overseer will resolve those issues.

Appendix K pp.30a-32a. In the instant case, the trial court determined:

> [E]ssentially the issue that is before me here is whether Roddy J. Nelson Shelton should be permitted to assume the position of General Overseer and this by reason of proposed documents which would suggest that he was to assume that position by reason of the passing of the prior General Overseer.
>
> For this Court to decide who will be the General Overseer would essentially be determine who will be the individual who will decide all religious doctrine for this Church. This the Court will not do.
>
> Under such circumstances it is the belief of the Court that the matter should be returned to

> the church members and to the duly designated bodies which are currently in effect."
>
> This court has already determined that the pertinent issues in this matter were doctrinal in nature and as such were not within its jurisdiction, and ordered "the matter be return[ed] to those people who are still in authority. . .the Board of Trustees who may then act accordingly."

Appendix K, pp. 30a, 33a-34a.

II.

THIS COURT IS OBLIGED TO DISREGARD PETITIONERS' FALLACIOUS DUE PROCESS ARGUMENT BASED ON LACK OF JURISDICTION.

Petitioners attempt to inject a new argument at this juncture which is not proper under 28 U.S.C. § 1257, in that, this Court will refuse to consider claims that were not raised or addressed below, *i.e.*, Petitioners "due process" argument, though based on fiction, was not raised below. This argument was never presented to any of the lower courts. This Honorable Court "will consider only the federal question raised provided it has been properly brought before the state court." *United States ex rel. Pascal v. Burke*, 90 F. Supp. 868, *cert. denied*, 337 U.S. 944 (1949); *Yee v. City of Escondido*, 503 U.S. 519, 523-33 (1992).

The argument propounded by Petitioners is flawed and simply untrue, there was in fact a full hearing, with current counsel representing their interest from the outset, with the opportunity to put on evidence, and an opportunity to cross

examine adverse witnesses during a court proceeding which satisfies due process requirements. *Matthew v. Eldridge,* 424 U.S. 319 at 333 (1976).

In November 1991, after a full hearing and extensive review of testimonial and documentary evidence, the lower court found it lacked jurisdiction. The order of the court dated November 20, 1991, finding that the court lacked jurisdiction to involve itself "in what it perceives to be a doctrinal matter" was unequivocable in regard to the instant case. (Appendix J pp.27a-28a). The order of the court dated November 21, 1991 removed any reference to the Church corporation from Petitioners' complaint and other filings. (Appendix I p. 26a). The aforementioned rulings were not appealed nor was reconsideration sought, and, as such, should be regarded as binding as to jurisdiction, parties and the merits of this litigation.

References to the Church corporate status and related matters are therefore irrelevant and not properly before the Court. Nevertheless, Petitioners erroneously contend because a church corporation exists, this results in all of the church body's affairs being secular in nature.

The trial court's action in denying Petitioners' petition to vacate, the two and a half year old, Order to Withdraw, Discontinue and End, was proper and within the authority of the trial court. The court was not bound by any rule of law to unnecessarily delay the rendering of its finding, of lack of subject matter jurisdiction, the same conclusion reached by the court in November 1991. The action remains a nullity. Petitioners sought reconsideration of this decision without success, filed an appeal to the Pennsylvania Superior Court without success, filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court which was denied, and subsequently have filed a petition with this Honorable Court, for a writ of certiorari to the Pennsylvania Superior Court.

Petitioners (with the support of a small group of dissidents), put forth their own agenda, contrary to the decisions of the highest Church judicatory, and contrary to will of the Church membership. They sought to impose their will on the Church through the court system without satisfaction. Petitioners then indicated the proper authority was the Church, however, they were not satisfied with the result. They caused disruption to Church services, and subsequently removed themselves from membership, content in starting another church, until well after the death of their leader, R. J. N. Shelton I, in 1994, when the aforementioned "Petition to Vacate" was filed.

Pa. R.C.P. 1032(b) provides:

> Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter or that there has been a failure to join an indispensable party, action be transferred which has jurisdiction be joined, but if that dismiss the action.

The court, in adherence to this rule of court and the constitutional prohibition via the Deference Rule, determined that there was no jurisdiction in 1991 over the subject matter, and nothing changed in 1994 in that regard. (Appendix C pp. 5a-10a). Therefore, the court was properly compelled to determine if a transfer were possible to another Commonwealth Court with jurisdiction. If such was not possible, the matter would have to be dismissed. However, the status of the case at that time was in a posture of seeking to vacate a discontinuance, therefore their petition to vacate was properly denied.

Petitioners erroneously claim an abuse of discretion "forced them out" of court, when quite simply the lack of jurisdiction properly prohibited Petitioners from gaining court access.

Petitioners argue form over substance in regard to procedural matters focusing on side issues, in an attempt to litigate a matter which is outside the jurisdiction of this Honorable Court. Now they seek to try to fit into some exception (claiming a clear non-doctrinal corporate matter of fraud), or find a procedural vehicle to have the Court revisit a matter that is simply not proper for judicial review.

Petitioners apparently choose not to understand that they request an intrusion into the spiritual ecclesiastical province of this hierarchical Church organization, that is clearly prohibited by our legal system. They also failed to understand that as members of that organization they implicitly agreed to abide by the decisions of the Church judicatory and, as such, do not have standing to assert their claim.

Petitioners aver that the Order to Withdraw, Discontinue and End was the result of an understanding of the parties to resolve the issue of President of the Board of Trustees at the December 1991 meeting of the Board of Trustees.

Query — why then was not the order submitted to have the matter marked settled, discontinued and ended? Where is the evidence of such an agreement? Why wait two to three years after the fact to allege such? Why was such an agreement not mentioned in Petitioners' letter (via Counsel) to Respondents? (Appendix H p. 25a).

Petitioners' contentions in this regard are tantamount to manufactured bad fiction under procedural subterfuge. Nevertheless, the matter of President was subsequently addressed by the Board of Trustees with a result contrary to Petitioners' wishes. Such action does not constitute unreasonable behavior or evidence any lack of good faith. Petitioners continue to argue form over substance, whether the

filing is referred to as of motion, response to petition, preliminary objections or otherwise, if there is an earlier determination as to lack of subject matter jurisdiction, the matter is not justiciable and as such was properly denied.

Petitioners have also filed another "virtually identical lawsuit", which is currently before the Court of Common Pleas, Philadelphia County docketed August Term 1994; No. 3654, **contrary to the interest of judicial economy.**

It is clear that the lower court acted properly and that there is no valid due process claim.

CONCLUSION

WHEREFORE, Respondents respectfully request this Honorable Court to deny the Writ for Certiorari to the Superior Court of Pennsylvania.

Respectfully submitted,

JOHN R. BROWN
Counsel of Record
LAW OFFICE OF JOHN R. BROWN, ESQ.
Attorney for Respondents
701 South 22nd Street
Philadelphia, Pennsylvania 19146
(215) 563-7513

Date: August 29, 1996

APPENDIX A — ORDER OF THE SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT DATED APRIL 30, 1996

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

No. 1004 Eastern District
Allocatur Docket 1995

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

v.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, IND., AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

Petition for Allowance of
Appeal from Superior Court

ORDER

PER CURIAM:

AND NOW, this 30th day of April, 1996, the Petition for Allowance of Appeal is hereby DENIED.

Appendix A

TRUE COPY FROM THE RECORD
ATTEST: April 30, 1996

s/ Patricia Johnson
PATRICIA JOHNSON
Chief Clerk
Supreme Court of Pennsylvania
Eastern District

APPENDIX B — JUDGMENT ORDER AND OPINION OF THE SUPERIOR COURT OF PENNSYLVANIA FILED NOVEMBER 20, 1995

IN THE SUPERIOR COURT OF PENNSYLVANIA

NO. 03125 PHILADELPHIA 1994

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

APPELLANTS

V.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Appeal from the Order Dated August 02, 1994, Docketed August 03, 1994, In the Court of Common Pleas of Philadelphia County, No. 2101 Nov. Term, 1991.

BEFORE: DEL SOLE, BECK, and HUDOCK, JJ.

JUDGMENT ORDER

This matter involves a challenge to church leadership which is doctrinal or ecclesiastical in nature. The action in equity sought a preliminary injunction that was denied based on a lack of jurisdiction. *See Atterberry v. Smith,* 522 A.2d 683 (Pa.

Commw. 1987) (matters of church policy are best left to ecclesiastical tribunals). The action was later withdrawn by plaintiffs' counsel. Plaintiffs then filed a Petition to Vacate the Order to Withdraw, Discontinue and End the action. Preliminary objections to the petition based on lack of jurisdiction were filed and sustained, and this appeal followed. Appellants raise specific procedural challenges, but the critical issue is our courts' lack of jurisdiction in this doctrinal matter. *Gundlach v. Laister,* 625 A.2d 706 (Pa. Commw. 1993); *Orthodox Church of America v. Pavuk,* 538 A.2d 632 (Pa. Commw. 1988). We affirm the lower court's decision on the basis of its opinion.

Order affirmed.

APPENDIX C — OPINION OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED APRIL 8, 1995

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

JUNE TERM, 1992

NO. 1887

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, et al

v.

ERIK SHELTON, et al

OPINION

DI BONA, J. DATE: APRIL 8, 1995

This is an appeal taken by the plaintiffs from this Court's Order of August 2, 1994, which denied the plaintiffs' Petition to Vacate the Order to Withdraw, Discontinue and End filed by plaintiffs on November 27, 1991. The procedural history of this case which led up to the denial of the aforesaid motion is relatively simple. Plaintiffs' Complaint in Equity and request for a Preliminary Injunction was filed on November 18, 1991. The Honorable Abraham J. Gafni held a hearing on November 19, 1991. The testimony at the hearing disclosed that the central dispute was one concerning the leadership of the church and the control of the hierarchy of the church organization. Judge Gafni held that there was no jurisdiction of the matter in the courts and that it should be decided by those persons still in authority

(namely the Board of Trustees) within the church. No reconsideration of this decision regarding jurisdiction was ever requested. No appeal of this decision was ever taken. On November 27, 1991, nine days after the Complaint in Equity was filed, the plaintiffs filed an Order to Withdraw, Discontinue and End the case.

On June 16, 1994, six months after the named plaintiff, Roddy J. Nelson Shelton I died, the church filed a Petition to Vacate the previously filed Order to Withdraw, Discontinue and End. The defendants filed a response to the Petition to Vacate in the nature of Preliminary Objections on July 22, 1994. The Preliminary Objections raised the identical issue to that raised before Judge Gafni two and one-half years before, namely the lack of jurisdiction. On Appeal, the plaintiffs assert that this Court erred in a) entering its August 2, 1994, Order before the August 22, 1994, response date due for the answer to defendants' Preliminary Objections, and b) entering an Order ruling on Preliminary Objections since Preliminary Objections are not a proper filing in the instant case. Unfortunately, plaintiffs attempt to create a smokescreen by choosing form over substance.

Rule 1028 of the Pa. Rules of Civil Procedure provide as follows:

> "(a) Preliminary Objections may be filed by any party *to any pleading* and are limited to the following grounds:
>
> (1) *lack of jurisdiction* over the subject matter of the action or the person of the defendant, improper venue or improper form or service of a writ of summons or a complaint;" (emphasis added).

Appendix C

Defendants' reply to plaintiffs' Petition to Vacate in the form of Preliminary Objections is clearly permitted by the rules of procedure. Next, the plaintiffs contend that the Court should have waited until plaintiffs filed a response to the Preliminary Objections. This position seeks to circumvent the central critical issue in this case which has been present (and ruled upon) since its very inception, the lack of jurisdiction. Plaintiffs seek to vacate an order which withdrew and ended a case in which Judge Gafni ruled there was no jurisdiction. The reason there was no jurisdiction is quite obvious, the courts are without power to decide church disputes which are doctrinal or ecclesiastical in nature. In *Atterberry v. Smith*, __ Pa. Cmwlth. __, 522 A.2d 683 (1987) it was held that:

> "In setting forth the law to be employed where the issue to be settled is a dispute involving a church our State Supreme Court has recently explained that a threshold determination must be made as to whether the dispute is one which is doctrinal in nature or instead involves only questions of civil law. *Presbytery of Beaver-Butler of the United Presbyterian Church v. Middlesex Presbyterian Church*, 507 Pa. 255, 489 A.2d 1317, *cert. denied*, __ U.S. __, 106 S. Ct. 198, 88 L. Ed. 2d 167 (1985). The *Middlesex* Court recognized that where the dispute involves principles of civil law, such as ownership of property, it can be solved 'without intruding into the sacred precincts' by employing neutral principles of law. *Id.* at 262, 489 A.2d at 1320-21. Where, however, the resolution of the issue involves questions of discipline,

faith, ecclesiastical rule, custom, or law, a civil court must defer to the highest church judicatory to which the question has been carried. *Id.* at 259, 489 A.2d at 1319 (citing *Watson v. Jones*, 80 U.S. (13 Wall.) 679, 20 L. Ed. 666 (1872) *See also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 713, 96 S. Ct. 2372, 2382, 49 L. Ed. 2d 151 (1976) (adding to the list of areas foreclosed from civil court intrusion a church's 'internal organization'). The wisdom of this 'deference rule' as it came to be known was recognized by the *Middlesex* Court when it wrote:

> [T]he right to practice one's belief and worship as one chooses is so deep a root of our constitutional culture that a court, even one with the best intentions, can be no more than a clumsy intruder into the most delicate and sensitive areas of human life. When Caesar enters the Temple to decide what the Temple believes, he can leave behind only his own views. The view of a court as to who are heretics among warring sects is worth nothing, and must count as nothing if our cherished diversity of religious views is to prevail.

Id. 507 Pa. at 260, 489 A.2d at 1320.

Appendix C

> As instructed by *Middlesex*, our initial task must be to determine whether the instant dispute is doctrinal or civil in nature. Although the trial court was not asked to decide a pure question of belief or faith, neither was the question one concerning a matter which is totally civil in nature, such as the ownership of property. Instead the issue seems to fall somewhere between the two categories enunciated in *Middlesex*. Resolution of the ultimate question calls not only for an examination of the form of church government, but also for a determination of whether Reverend Whyte is in fact the local pastor and what, if any, powers the local pastor has with respect to appointment and removal of church officers. In our view these latter questions in particular are more akin to doctrinal questions than to civil ones. Our determination that the instant dispute is primarily doctrinal is based upon *Watson* as well as one of its more recent progeny, *Jones v. Wolf*, 443 U.S. 595, 99 S. Ct. 3020, 61 L. Ed. 2d 775 (1979), both of which indicate that matters of church polity are best left to ecclesiastical tribunals."

522 A.2d 683 at 685-686.

Clearly, the appointment and removal of church officers is primarily doctrinal. See also *Orthodox Church of America v. Pavuk*, __ Pa. Cmwlth. __, 538 A.2d 632 (1988) and *Gundlach v. Laister*, __ Pa. Cmwlth. __, 625 A.2d 706 (1993).

Appendix C

Judge Gafni had made the preliminary determination that the substantive dispute concerning Rev. Shelton's ascendancy to the position of General Overseer was doctrinal in nature and, therefore, the deference rule was applied. In the two and one-half year interim, nothing had changed which would warrant departing from Judge Gafni's determination that this Court lacked jurisdiction over the subject matter of this suit. Therefore, the Petition to Vacate was denied. The Order of this court dated August 2, 1994, should stand accordingly.

s/ Di Bona
ALFRED J. DI BONA, JR.
J.

APPENDIX D — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED AUGUST 2, 1994

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., ET AL

v.

ERIK SHELTON, ET AL

ORDER

AND NOW, this 2nd day of August, 1994, upon consideration of plaintiff's Petition to Vacate the Order to Withdraw, Discontinue and End filed on November 27, 1991, and upon consideration of defendant's response thereto in the nature of Preliminary Objections, it is hereby ORDERED AND DECREED that plaintiff's Petition be and is hereby denied and that the order to withdraw, discontinue and end shall remain in full force and effect.

BY THE COURT:

s/ Di Bona
ALFRED J. DI BONA, JR.
J.

APPENDIX E — BOARD OF TRUSTEES' RESOLUTION AND CERTIFICATION DATED SEPTEMBER 1, 3, 1992

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

BISHOP KENNETH N. SHELTON
(BISHOP OMEGA Y. L. SHELTON)
APOSTLE AND GENERAL OVERSEER
HEADQUARTERS: 22ND & BAINBRIDGE STREETS,
PHILADELPHIA, PA 19146-0180, U.S.A.
POST OFFICE BOX 3880

RESOLVED THAT THE FOLLOWING PERSONS SHALL BE TRUSTEES OF THE GENERAL ASSEMBLY UNTIL THE NEXT SCHEDULED GENERAL ASSEMBLY MEETING:

NAME	TITLE
BISHOP KENNETH N. SHELTON	PRESIDENT & TREASURER
ELDER ERIK V. SHELTON	VICE-PRESIDENT & SECRETARY
MINISTER JOHN C. SHELTON-THOMAS	CHIEF ADMINISTRATOR
A. WOODWARD SHELTON-REAGAN (ELDER)	
J. ERIC SMITH (ELDER)	
GEORGE BROWN (DEACON)	

Appendix E

AND THAT THE ABOVE-NAMED PERSONS SHALL HOLD EXECUTIVE POSITIONS AS LISTED.

****

RESOLVED THAT ALL CHURCH ACCOUNTS SHALL BE SIGNED BY BISHOP KENNETH N. SHELTON ALONE OR ELDER ERIK V. SHELTON AND MINISTER JOHN C. SHELTON-THOMAS TOGETHER.

CERTIFIED FROM THE RECORD 09-01-92
ADOPTED BY GENERAL ASSEMBLY 09-03-92

Appendix E

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

BISHOP KENNETH N. SHELTON
(BISHOP OMEGA Y. L. SHELTON)
APOSTLE AND GENERAL OVERSEER
HEADQUARTERS: 22ND & BAINBRIDGE STREETS,
PHILADELPHIA, PA 19146-0180, U.S.A.
POST OFFICE BOX 3880

CERTIFICATION

WE, THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., DO HEREBY ATTEST THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE RESOLUTIONS AND AMENDMENTS TO THE ARTICLES CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC. WHICH WERE CERTIFIED FROM THE RECORD ON SEPTEMBER 1, 1992 AND ADOPTED BY THE GENERAL ASSEMBLY ON SEPTEMBER 3, 1992.

THIS STATEMENT IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF AND IS SUBJECT TO THE PENALTIES OF 18 PA.C.C. SEC 4909 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

s/ Bishop Kenneth N. Shelton
BISHOP KENNETH N. SHELTON,
PRESIDENT AND TREASURER

Appendix E

s/ Elder Erik V. Shelton
ELDER ERIK V. SHELTON,
VICE-PRESIDENT AND SECRETARY

s/ Minister John C. Shelton-Thomas
MINISTER JOHN C. SHELTON-THOMAS
CHIEF ADMINISTRATOR

DATED: 10-8-92

APPENDIX F — BOARD OF TRUSTEES' RESOLUTION AND CERTIFICATION DATED DECEMBER 28 AND 29, 1991

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

BISHOP S. MCDOWELL SHELTON
APOSTLE AND GENERAL OVERSEER
HEADQUARTERS: ON APOSTOLIC SQUARE
AT 22ND & BAINBRIDGE STREETS
PHILADELPHIA, PA 19146-0180, U.S.A.
POST OFFICE BOX 3880

AMENDMENTS TO THE BY-LAWS OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

GENERAL BUSINESS SESSION HELD ON APOSTOLIC SQUARE, DECEMBER 29, 1991

REVISED ARTICLE TWO SECTION II

ON OR AFTER DECEMBER 29, 1991, THE TRUSTEES BY A MAJORITY VOTE OF THE BOARD OF TRUSTEES ARE GIVEN BLANKET AUTHORITY TO CONDUCT ALL NEGOTIATION AND CLOSINGS IN NEW PURCHASE OR SALE OF ANY PROPERTY, REAL OR PERSONAL, TO BE ACQUIRED OR DISPOSED OF BY THE GENERAL ASSEMBLY CORPORATION. THE TITLE TO ANY REAL OR PERSONAL PROPERTY IS TO BE ACQUIRED IN THE NAME OF THE TRUSTEES OF THE GENERAL ASSEMBLY. TITLE TO ANY REAL OR PERSONAL PROPERTY IS TO BE DISPOSED OF IN LIKE MANNER (AMENDED 1991).

****

Appendix F

ON OR AFTER DECEMBER 29, 1991 THE RECORDED VOICE OF HIS HOLY APOSTOLIC BLESSEDNESS BISHOP S. MCDOWELL SHELTON SHALL BE UTILIZED IN ALL OF THE AFFILIATED CHURCHES OF THE CHURCH OF THE LORD JESUS CHRIST FOR CHURCH SERVICES UNLESS OTHERWISE AUTHORIZED BY THE MAJORITY VOTE OF THE BOARD OF TRUSTEES (AMENDED 1991).

****

THE APPOINTMENT AND RENEWAL OF EXECUTIVES AND TRUSTEES SHALL BE LEFT UP TO THE MAJORITY VOTE OF THE BOARD OF TRUSTEES (AMENDED 1991).

****

CERTIFIED FROM THE RECORD
12-28-91

Appendix F

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

BISHOP S. MCDOWELL SHELTON
APOSTLE AND GENERAL OVERSEER
HEADQUARTERS: ON APOSTOLIC SQUARE
AT 22ND & BAINBRIDGE STREETS
PHILADELPHIA, PA 19146-0180, U.S.A.
POST OFFICE BOX 3880

RESOLVED THAT THE FOLLOWING PERSONS SHALL BE TRUSTEES OF THE GENERAL ASSEMBLY UNTIL THE NEXT SCHEDULED GENERAL ASSEMBLY MEETING:

NAME	TITLE
KENNETH N. SHELTON	CO-PRESIDENT
A. WOODWARD SHELTON-REAGAN	CO-PRESIDENT
ERIK V. SHELTON	SECRETARY
FINCOURT B. SHELTON	TREASURER
JOHN C. SHELTON-THOMAS	CHIEF ADMINISTRATOR
NATHANIEL SHELTON-BLIGEN	
J. ERIC SMITH	
GEORGE BROWN	

Appendix F

AND THAT THAT ABOVE-NAMED PERSONS SHALL HOLD EXECUTIVE POSITIONS AS LISTED.

****

RESOLVED THAT ALL CHURCH ACCOUNTS SHALL BE SIGNED BY ANY TWO OF THREE NAMED EXECUTIVE TRUSTEE PERSONS:

NAME	TITLE
KENNETH N. SHELTON	CO-PRESIDENT
A. WOODWARD SHELTON-REAGAN	CO-PRESIDENT
ERIK V. SHELTON	SECRETARY

CERTIFIED FROM THE RECORD 12-27-91
ADOPTED BY GENERAL ASSEMBLY 12-29-91

Appendix F

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

BISHOP S. MCDOWELL SHELTON
APOSTLE AND GENERAL OVERSEER
HEADQUARTERS: ON APOSTOLIC SQUARE
AT 22ND & BAINBRIDGE STREETS
PHILADELPHIA, PA 19146-0180, U.S.A.
POST OFFICE BOX 3880

CERTIFICATION

WE, THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., DO HEREBY ATTEST THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE RESOLUTIONS AND AMENDMENTS TO THE BY-LAWS OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC. WHICH WERE CERTIFIED FROM THE RECORD ON DECEMBER 28, 1991 AND ADOPTED BY THE GENERAL ASSEMBLY ON DECEMBER 29, 1991.

THIS STATEMENT IS TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE, INFORMATION AND BELIEF AND IS SUBJECT TO THE PENALTIES OF 18 PA.C.C. SEC. 4909 RELATING TO UNSWORN FALSIFICATION TO AUTHORITIES.

s/ Elder Kenneth N. Shelton
ELDER KENNETH N. SHELTON
CO-PRESIDENT

Appendix F

s/ Elder A. Woodward Shelton-Reagan
ELDER A. WOODWARD SHELTON-REAGAN
CO-PRESIDENT

s/ Elder Erik V. Shelton
ELDER ERIK V. SHELTON
SECRETARY

s/ Minister Fincourt B. Shelton
MINISTER FINCOURT B. SHELTON
TREASURER

s/ Minister John C. Shelton-Thomas
MINISTER JOHN C. SHELTON-THOMAS
CHIEF ADMINISTRATOR

DATED: 1-23-92

SEAL

APPENDIX G — NOTICE OF BOARD OF TRUSTEES MEETING DATED DECEMBER 16, 1991

Area Code 215 735-8982 Cable Address: Apostolic Philadelphia

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE
CHURCH OF THE LORD JESUS CHRIST
OF THE APOSTOLIC FAITH, INC.

BISHOP S. McDOWELL SHELTON -
APOSTLE GENERAL OVERSEER
HEADQUARTERS: ON APOSTOLIC SQUARE
AT 22ND & BAINBRIDGE STREETS
PHILADELPHIA, PENNSYLVANIA 19146 U.S.A.
POST OFFICE BOX 3880

TWELFTH MONTH 16, 1991

NOTICE

TO: Board of Trustees

Be it known, that a Board of Trustees meeting will be held on December 28, 1991 at Headquarters Conference Room, located at 701 South 22nd Street, Philadelphia, PA Apostolic Square starting at 12 noon. This meeting will be open only to Board of Trustees members.

The Board of Trustees will meet for the purpose of deciding Church affairs arising as a result of the passing of our Holy Apostolic Blessedness, Bishop S. McDowell Shelton.

By Order of the Board of Trustees

s/ Elder Nehemiah
Elder Nehemiah
President

s/ Elder Marcus
Elder Marcus
President

APPENDIX H — ORDER TO WITHDRAW, DISCONTINUE AND END AND PLAINTIFFS' COUNSEL'S CORRESPONDENCE TO DEFENDANT DATED NOVEMBER 27, 1991 (ORDER) AND NOVEMBER 25, 1991 (CORRESPONDENCE)

LEON W. TUCKER, ESQUIRE
IDENTIFICATION NO. 22760
JOHN PAUL SIMPKINS, ESQUIRE
IDENTIFICATION NO. 16023
Suite 1300, Robinson Building
42 South 15th Street
Philadelphia, PA 19102
(215) 568-8040

Attorneys for Plaintiffs

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH,

and

RODDY J. NELSON SHELTON I,
General Overseer

and

RODDY J. NELSON SHELTON, II,
Trustee

and

FRANK MATTHEWS,
Trustee

PLAINTIFFS

vs.

ERIK SHELTON

Appendix H

and
KENNETH SHELTON
and
ALONZO WOODWARD REAGAN
and
FINCOURT B. SHELTON
and
JOHN CARLTON THOMAS
and
DANIEL BOWENS
and
GEORGE BROWN

INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

DEFENDANTS

ORDER TO WITHDRAW, DISCONTINUE AND END

TO THE PROTHONOTARY:

Please mark the above action withdrawn, discontinued and ended without prejudice.

s/ Leon W. Tucker
LEON W. TUCKER, ESQUIRE

DATED: November 25, 1991

Appendix H

LAW OFFICES OF
LEON W. TUCKER
SUITE 1300, ROBINSON BUILDING
N.W. COR. 15TH & CHESTNUT STREETS
PHILADELPHIA, PENNSYLVANIA 19102

(215) 568-8040

November 25, 1991

Mr. John Carlton Thomas
1116 W. Maple Avenue
Langhorne, Pennsylvania 19047

RE: Church of the Lord Jesus Christ of the Apostolic Faith, et al.
vs.
Erik Shelton, et al.
C.C.P. November Term, 1991, No. 2101

Dear Mr. Thomas:

This correspondence is to inform you that the above-referenced matter is to be withdrawn at the explicit request of my clients, Roddy J. Nelson Shelton I, Roddy J. Nelson Shelton II and Frank Matthews. This matter is being withdrawn and terminated as the Apostolic manner to resolve this matter.

Very truly yours,
s/ Leon W. Tucker
LEON W. TUCKER

LWT: cjo
cc: Roddy J. Nelson Shelton I
Roddy J. Nelson Shelton II
Frank Matthews

APPENDIX I — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED NOVEMBER 21, 1991

LEON W. TUCKER, ESQUIRE
IDENTIFICATION NO. 22760
JOHN PAUL SIMPKINS, ESQUIRE
IDENTIFICATION NO. 16023
Suite 1300, Robinson Building
42 South 15th Street
Philadelphia, PA 19102
(215) 568-8040

Attorneys for Plaintiffs

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991
NO. 2101

RODDY J. NELSON SHELTON I, ET AL.

vs.

ERIK SHELTON, et al.

ORDER

AND NOW, this 21st day of November, 1991, it is hereby Ordered that Plaintiffs Motion for Preliminary Injunction and Complaint is amended to reflect in all instances "Church of the Lord Jesus Christ of the Apostolic Faith" in the place of The Church of the Lord Jesus Christ of the Apostolic Faith, Inc.

BY THE COURT:

s/ Abraham J. Gafni
Abraham J. Gafni, J.

APPENDIX J — ORDER OF THE COURT OF COMMON PLEAS, PHILADELPHIA COUNTY DATED NOVEMBER 20, 1991

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Suite 1300, Robinson Building
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Attorneys for Plaintiffs

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH,

and

RODDY J. NELSON SHELTON I,
General Overseer

and

RODDY J. NELSON SHELTON, II,
Trustee

and

FRANK MATTHEWS,
Trustee

PLAINTIFFS

vs.

ERIK SHELTON

and

Appendix J

KENNETH SHELTON
and
ALONZO WOODWARD REAGAN
and
FINCOURT B. SHELTON
and
JOHN CARLTON THOMAS
and
DANIEL BOWENS
and
GEORGE BROWN

INDIVIDUALLY AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

DEFENDANTS

ORDER

AND NOW, this 20th day of November, 1991, after hearing, it is ORDERED and DECREED that Plaintiff's Petition for Preliminary Or Special Injunction is denied as the Court has determined that it is without jurisdiction to involve itself in what it perceives to be a doctrinal matter; and its hereby ORDERED and DECREED that no duly authorized officer shall be prevented from participating in their administative duties and responsibilities.

BY THE COURT:

s/ Abraham J. Gafni
ABRAHAM J. GAFNI, J.

APPENDIX K — OPINION OF THE COURT OF COMMON PLEAS (AFTERNOON TRANSCRIPT), PHILADELPHIA COUNTY DATED NOVEMBER 20, 1991

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

NOVEMBER TERM, 1991

NO. 2101

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC., et al.

v.

ERIK SHELTON, et al.

Room 426, City Hall
Philadelphia, Pennsylvania

November 20, 1991

BEFORE: HONORABLE ABRAHAM J. GAFNI, J.

APPEARANCES:

LEON W. TUCKER, ESQUIRE
JOHN PAUL SIMKINS, ESQUIRE
Attorneys for Plaintiffs

FINCOURT B. SHELTON, ESQUIRE
Attorneys for Defendants

KATHERINE L. HIRST, R.P.R.

Appendix K

[2] THE COURT: As counsel pointed out to me, we are here on a request for a preliminary injunction.

While much is alleged in the motion, essentially the issue that is before me here is whether Roddy J. Nelson Shelton should be permitted to assume the position of General Overseer and this by reason of proposed documents which would suggest that he was to assume that position by reason of the passing of the prior General Overseer.

During the break that we had I had an opportunity to review the many documents which have been submitted to me by counsel. And one of the reasons that I did that was for the purpose of determining exactly who and what is the General Overseer, what position does that overseer hold, what are the responsibilities of that overseer, and what authority may that overseer exercise.

The purpose of my so doing was because of the argument, which I believe both counsel have pretty much agreed to, that the Court may not involve itself in matters involving the interpretation of ecclesiastical [3] or canon law or doctrine.

On the other hand, courts may involve themselves in matters relating to what might be called civil property rights and things of that sort not otherwise involved in religious doctrine and practice.

In reviewing the by-laws and rules, and there has been some dispute as to what certain rules or by-laws or documents were that were adopted, there are certain documents which everybody agrees were adopted. And these discuss the responsibility and the authority of the General Overseer.

Appendix K

And it would appear to this Court that the General Overseer has virtually unlimited, unbridled and unqualified authority to override the action of virtually any other body within the church.

For example, under Article X, "The General Overseer shall have full authority to determine any question concerning parliamentary procedures and there shall be no appeal from the decision of the General Overseer."

Further in that article, "The [4] General Overseer shall be the full arbitrator on all matters affecting the interpretation doctrine applicable to The Church of the Lord Jesus Christ."

Continuing on to Article XI we find that any amendments to the by-laws or the rules or regulations must first "be submitted to the General Overseer who's approval is a condition presented to their submission to the General Assembly."

In addition to that there is a provision for cases of insubordination and grievance in which there is a committee composed of the General Overseer or nominee, the state elder and another man of good report among the saints chosen by the General Overseer but ultimately General Overseer has full authority to suspend or expel any person from the General Assembly.

The overseer appoints investigative committees.

Final appeals are taken to the overseer.

The overseer has the power to suspend or expel any person so tried from the [5] General Assembly of the church or from any local assembly thereof.

Appendix K

In fiscal matters and in general management the overseer is always a trustee and the president of the board. But no member may be elected to be a trustee unless that person is first approved and nominated by the General Overseer.

And finally if there is any other conflict in the rules or regulations or by-laws the General Overseer will resolve those issues.

Under those circumstances the question is then presented to the Court as to whether a court, a civil court, a court of the Commonwealth of Pennsylvania should involve itself in the question of who should be the General Overseer of this church, and whether if a court so involves itself it will be involving itself strictly in an interpretation of the by-laws, whether it will be involving itself in the matters of civil rights and responsibilities or whether it will be involving itself in ecclesiastical or religious doctrine and practice.

[6] In the opinion of the Court, having reviewed the various items which I have just recited here together with the other documents which have been presented to me, I am satisfied that these documents, at least as I understand them, would not allow this Court to distinguish between the responsibilities of the General Overseer insofar as they relate to the ecclesiastical and religious practice and as they relate to the civil practice.

I note further that in the document which was attached as Exhibit C to the petition and complaint, which was dated 1977, 30 September, there is reference to a direct succession. And the plaintiff Roddy J. Nelson is designated as the person in direct succession.

Appendix K

There are provisos in that respect, however, and they relate to providing that all persons named in this document, and that would of course include the aforesaid individual, are in good fellowship of The Church of the Lord Jesus Christ and the Royal Apostolic House of Shelton and as successor, Roddy J. Nelton Shelton.

[7] In other words, there are provisos insofar as they relate to this even if the person has been serving as General Secretary.

This Court is satisfied that were it to make a determination as to who should serve as General Overseer, in light of the very broad powers of the General Overseer it would be deciding not only how the business of the church should be managed, its money and its real estate and whatever other physical assets it may have in this world but it would essentially be determining who and how the religious and ecclesiastical doctrine and function of the church should be followed.

It's the opinion of the Court that at least at this point, at least on a preliminary injunction it is without authority to act in this regard.

For this Court to decide who will be General Overseer would essentially be to determine who will be the individual who will decide all religious doctrine for this church. This the Court will not do.

The Court is particularly [8] reluctant to do so when we recognize that the person ultimately assigned and appointed as General Overseer would have the unbridled and unlimited right to expel from the church anyone with whom that individual disagrees.

Appendix K

Under such circumstances it is the belief of the Court that the matter should be returned to the church members and to the duly designated bodies which are currently in effect.

That is not to say that the Court may not ultimately find itself involved in this matter.

It well may be, and I'm sure counsel are aware of this, that cases do indicate that if there are suggestions of fraud, mismanagement or other matters the Court may involve itself in the management of the business or practices or the management of the assets of the corporation, and this it may do.

However, at this stage, at this time it will be necessary for this Court to determine that it has no jurisdiction.

Under these circumstances the [9] matter can return then to those people who are still in authority, which as I understand in a nonprofit corporation will remain the Board of Trustees who may then act accordingly.

The individual members of the church may seek such avenues of appeal within the church as they deem appropriate. They may do as appropriate within the church.

And, of course, if any of the exceptions whereby the Court may intrude in the affairs of the church come into play, this Court stands ready to involve itself.

At this point, however, it is very apparent that there is a serious tribunal dispute with respect to who is authorized to act as the religious leader for a church. And this Court is loathe to engage in such an activity.

Appendix K

Under such circumstances the preliminary objection requesting that this Court determine that the Court is without jurisdiction to entertain this motion at least in its current term posture will be allowed and the request for a preliminary injunction alone will be dismissed.

[10] Of course that does not dismiss the complaint. The matter still continues and can be brought up to the legal limited areas to which I made reference.

Is there anything further that either counsel wishes to say to me at this time?

MR. TUCKER: Yes, Your Honor.

It appears that the issue before the Court is not so much who should be the General Overseer but the procedure under which the person is to be the General Overseer.

The Court having ruled I would simply ask the Court for a trial date on the complaint.

MR. SHELTON: Your Honor, I've got until December 18 under the rules to answer their complaint. I have not filed an answer. I will file an answer on or before December 18 as required under the rules.

THE COURT: You may do so and I will give you that time to do so.

Let me, however, advise everyone and warn everybody. As I indicated, [11] the issue as presented to me was really who was going to take over the management right now, and once I

determined that the General Overseer is so integrally involved in the management of the religious aspects of the organization I was not prepared to do so.

However, I want to be very careful and caution everybody that I have not said that the courts will not otherwise be involved. I did indicate that the courts can and do become involved.

If this Court has brought to its attention any suggestion that there is mismanagement or fraud either in the selection of officials or in the management of the assets, any one member of the organization has the right to say that my board of trustees or my officers are doing wrong.

And I want to tell you that if that occurs you will not have any difficulty in asserting jurisdiction in the matter.

May I also add that one of the problems that we have in this case, unlike many of the other cases to which both counsel made reference, is that in most instances what [12] you had was a local authority, a local church where there wasn't in existence a higher authority because they were part of a larger hierarchy.

In this case we are actually dealing with the top of the hierarchy so there is no higher group.

When you have that situation the general practice is to go to the group — and everybody make reference to the articles of incorporation. And I believe I'm also somewhat familiar with both corporate and noncorporate law.

And ultimately the people who are going to have to decide this are the Board of Trustees. And if the Board of Trustees

cannot decide it because there is some problem it may well be that the members are going to have to decide it also. And they will have that opportunity.

But I would caution everybody that this matter may not be over today. And I caution everybody to be very careful and very circumspect because obviously whoever has authority to do anything will be watched very [13] closely by those who do not. Very closely.

And I caution you that we are going to still be here and I'm going to be here or another judge will oversee the matter.

That having been said, I believe that this matter is now ended.

- - -

(Proceedings concluded at 3:30 p.m.)

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[14] CERTIFICATE

I hereby certify that the testimony and the proceedings in the aforegoing matter are contained fully and accurately in the stenographic notes taken by me and that the copy is a true and correct transcript of the same.

s/ Katherine L. Hirst
KATHERINE L. HIRST, R.P.R.
Official Court Reporter
Court of Common Pleas
Philadelphia, Pennsylvania

The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or direction of the certifying Shorthand Reporter.

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No. 96-154

In The

Supreme Court of the United States

October Term, 1995

CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, RODDY J. NELSON SHELTON, I., RODDY J. NELSON SHELTON, II., FRANK MATTHEWS,

Petitioners,

vs.

ERIK SHELTON, KENNETH SHELTON, ALONZO WOODWARD REAGAN, FINCOURT B. SHELTON, JOHN CARLTON THOMAS, DANIEL BOWENS, GEORGE BROWN, INDIVIDUALLY, AND AS TRUSTEES OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.,

Respondents.

On Petition for A Writ of Certiorari to the Superior Court of Pennsylvania

REPLY BRIEF FOR PETITIONERS

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LIST OF PARTIES AND INTERESTS

Respondents never excluded Fincourt B. Shelton as a party nor was Fincourt B. Shelton dismissed or in any way excused from this litigation. Hence Fincourt B. Shelton remains a party to the litigation. Additionally, the fact that the Church of the Lord Jesus Christ of the Apostolic Faith is reflected in all instances in the place of the Lord Jesus Christ of the Apostolic Faith, Inc. is of no moment inasmuch as the Respondent Trustees were sued in their individual capacities as well as in their capacities as Trustees of the Church of the Lord Jesus Christ of the Apostolic Faith.

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STATEMENT OF JURISDICTION

Respondents contend that many of the questions presented for review were never presented to the Pennsylvania courts. Respondents are well aware that the request for reconsideration to the trial court was sought when the trial court prematurely entered an Order without allowing the Petitioners to respond to preliminary objections that were filed by Respondents, thereby denying due process. This Court has authority to review the denial of due process by the state court where the state court refuses to allow a response to a pleading such denial is a denial of fundamental fairness and due process. (*See* Appendix H, 30a) (July 22, 1994 Letter).

CONSTITUTIONAL PROVISIONS AND RULES INVOLVED

Petitioners simply seek this Court to determine that the actions of the lower court were erroneous as the electorial process and notice provisions established by the state statutes regarding election of corporate officers were not adhered to, affecting thousands of corporate members. The courts have long held that civil courts may resolve disputes between members of a religious congregation, when those disputes, as here, are not doctrinal in nature. *See Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church,* 489 A.2d 1317 (Pa. 1985), *cert. denied,* 474 U.S. 887, 106 S. Ct. 198 (1985).

Furthermore, Pennsylvania Rule of Civil Procedure 1032B is not applicable inasmuch as Petitioners did not fail to join an indispensable party, nor have Respondents ever alleged such, and as stated above, the state court has jurisdiction over the subject matter of this litigation.

STATEMENT OF CASE

Petitioners contend that upon the death of Bishop Johnson, a Board of Trustees elected his successor, S. McDowell Shelton. Respondents attempt to hide the interim process prior to the election. The pertinent by-law XVI, attached hereto as Appendix I (31a), reveal that the Secretary General shall temporarily succeed the General Overseer. Hence there is an interim process prior to the election. Such denial has effected the probability of Petitioner becoming President permanently.

Respondents contradict the Articles of Incorporation which clearly set forth that the duties of the Board of Trustees is to own and maintain real property of the church, and not to determine the spiritual head of the church. *See* Appendix J, 32a. The Board of Trustees of the Corporation is not the highest judiciary of the church as it is separate from the church.

Respondents continue to attempt to intertwine the ecclesiastical issues with the secular issues. Petitioners simply are seeking to have the Court review the secular operation of the corporation and the due process issues denied by the state court.

Respondents concede that the lower court stated that the court would have jurisdiction to entertain allegations of fraud with respect to management of the church corporation. Petitioners filed a petition alleging such fraud to which preliminary objections were filed. Petitioners complain herein as in the lower courts, that the court erroneously sustained the preliminary objections, notwithstanding the fact that Respondents forwarded correspondence allowing, pursuant to court rule, a response to be filed within twenty (20) days. *See* Appendix H at 30a. The court on the second day denied Petitioners due process by entering an Order sustaining the Preliminary Objections without the opportunity of Petitioner to respond to the Preliminary Objections.

Respondents make much ado about the court stating "that having been said, I believe this matter is now ended". *See* Respondents' Brief in Opposition at 5. A review of the court's statement placed in the proper context reveals that the court simply meant that the hearing was ended and that the court would entertain Petitioners' issues of fraud and mismanagement of the corporate property. *See* Petitioners' Appendix F at 27a.

Respondents further contend that a meeting of the Board of Trustees in a special general business session of the Board of Trustees of December, 1991 was held. The crux of this litigation is that the notice required by the corporate statutes regarding notice of elections, quorums and the like, have not been met giving Respondents an unfair election advantage. Respondents fail to state with specificity the date of the meeting or the date of the notice as no such notice was sent to Petitioners. These issues have nothing to do with ecclesiastical matters, but simply the right of the state courts to enforce the corporate statutes regarding election of corporate officers.

At no time did the Petitioners leave the church organization or form any other church corporation.

The additional subject of Petitioners' Complaint is that on or about May 23, 1992 the Board of Trustees which is a secular entity allegedly voted unanimously to install Kenneth N. Shelton to the position of General Overseer. The Board of Trustees did so without authority and clearly in violation of the corporate by-laws, articles of incorporation, custom and practice. *See* Appendix I at 31a (Rules and By-laws).

Respondents attempt to mislead this Court that the issues regarding due process have not been raised before. However, Respondents in its Brief in Opposition, p. 7, clearly set forth that the Petitioners sought reconsideration of the Court Order

which prematurely denied Petitioners' Motion to Vacate. *See* Appendix D, p. 11a of Respondents' Brief in Opposition and Petitioners' Appendix C, p. 12a.

FURTHER REASONS FOR GRANTING THE WRIT

Petitioners simply seek the Court to enforce the state statues regarding the mandate of the electorial process of non-profit corporations in the Commonwealth of Pennsylvania.

I. THE COURT HAS JURISDICTION OVER THE MATTERS IN PETITIONERS' PETITION.

The Deference Rule provides that civil courts are bound to accept the decision of the *highest judicatories* of a religious organization of hierarchial policy on matters of discipline, faith or ecclesiastical rule, custom, or law. *Poesnecker v. Ricchio,* 631 A.2d 1097, 1103 (Pa. Cmwlth. 1993), citing *Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S. Ct. 2372 (1976). This matter did not go to the highest judicatories of the church nor the corporation. Petitioners' Complaint in Equity alleges fraud and abuse on behalf of certain members of the Board of Trustees in corporate matters and not doctrinal matters.

It is well settled that civil courts may resolve disputes between members of a religious congregation when those matters, as here, are not doctrinal in nature. In *Presbytery of Beaver-Butler of the United Presbyterian Church in the United States v. Middlesex Presbyterian Church,* 489 A.2d 1317 (Pa. 1985), *cert. denied,* 474 U.S. 887, 106, S. Ct. 198 (1985), where a dispute arose between different factions in a Church, the Pennsylvania Supreme Court held that such issues are properly resolved by the civil court. *See also, Roth v. May,* 510 A.2d 908 (Pa. Cmwlth. 1986); *Orthodox Church of America v. Pauk,* 538 A.2d 632 (Pa. Cmwlth. 1988) (dispute between members of a

congregation involving principles of civil law may be resolved upon consideration of neutral principles); and *Cosfol v. Varvoutis*, 213 A.2d 331 (Pa. 1965). In that case the court, as in this case, was to look at church documents to determine if church canons have been followed.

The instant corporation is a not-for-profit corporation organized under the laws of the Commonwealth of Pennsylvania and subject to the laws of the Commonwealth of Pennsylvania by virtue of incorporation in the Commonwealth, the corporation happens to be a church. *See* Pennsylvania Not-For-Profit Corporation Law of 1988, 15 Pa. C.S. §§ 5101-6162 (the "Act"). Petitioners' Complaint and Petition before this Court simply asks the Court to enforce the corporation's By-laws and Articles of Incorporation as they relate to the Act and as the Court would do in any corporation matter.

The Petition here clearly reflects that the relief sought by Petitioners do not require a determination of ecclesiastical issues, but rather may be decided by reference to the "neutral principles" of law approach which the United States Supreme Court announced in *Presbyterian Church v. Mary Elizabeth Blue Hill Memorial Presbyterian Church*, 393 U.S. 440, 89 S. Ct. 601 (1969). *See also, Poesnecker v. Ricchio, supra*, at 1103. The situation described by Petitioners' Complaint involve questions of civil law which are not predicated on religious doctrine. Rather, the issues concern matters relating to the Act, the election of corporate officers, interfering with the corporate affairs of the corporation, physical abuse of members and improper dealings with property and finances. Thus, in resolving these issues, the court can apply legal principles which are religiously neutral. *Id., see also, Gudlack v. Laister*, 625 A.2d 706, 710 (Pa. Cmwlth. 1993).

governing Pennsylvania Non-Profit Corporation to this matter. It is not disputed that the church is a non-profit corporation pursuant to the Act. Under 15 Pa. C.S. § 5764.1 of the Act, the trial court is authorized to mandate action in accordance with the nonprofit statute:

> § 5764.1. Actions by members to enforce a secondary right
>
> (a) General rule. — Except as provided in subsection (b) of this section, in any action brought to enforce a secondary right on the part of one or more members against any officer or director, or former officer or director, of a nonprofit corporation because such corporation refuses to enforce rights which may properly be asserted by it, the appellant or Appellants must aver and it must be made to appear, that the appellant or each appellant was a member of such corporation at the time of the transaction of which he complains.

The court should not interfere with the internal management of a corporation unless the acts complained of constitute fraud, bad faith, gross mismanagement or are unlawful. *McDonald v. Lake Haute Club,* 59 Pa. Cmwlth. 36, 37, 428 A.2d 785, 786 (1981). This is exactly the kind of conduct complained of by Petitioners here. Respondents not only in bad faith failed to abide by the original agreement to have lawful elections, but also acted fraudulently and unlawfully in preventing Petitioners from holding an election and entering corporate property. The court's jurisdiction is accordingly clear and the exercise of same exceedingly proper.

The court below, in its opinion of April 8, 1995, confirms that the decision by Judge Gafni was but a preliminary determination (Petitioners' Appendix C, 7a). Nonetheless, Petitioners were not afforded the opportunity to respond to Respondents' Preliminary Objections which were not permitted by the Pennsylvania Rules of Civil Procedure, denying Petitioners' due process.

Respondent in one breath states that the issue was not raised in the court below and in another breath states that Petitioners filed a Petition for Reconsideration which was denied. *See* Respondents' Brief in Opposition at 7. Petitioners' due process argument is the denial for which the reconsideration was sought.

II. THE TRIAL COURT ERRED NOT ALLOWING PETITIONER TO RESPOND TO RESPONDENTS' IMPROPER PRELIMINARY OBJECTION THEREBY CAUSING A DENIAL OF DUE PROCESS.

The court erred when it did not allow the statutory time for Petitioners' response to Respondents' Preliminary Objections before ruling on the objections. The court, under an erroneous conclusion that the Petition to Vacate the order to Withdraw, Discontinue and End is a pleading, did not allow the Petitioners the time to respond thereto pursuant to Pa. R.C.P. 1028(c) (1). The Petition to Vacate the Order to Withdraw, Discontinue and End is not a pleading as set forth in Pa.R.C.P. 1017. Pa. R.C.P. 1028(c) provides that: "A party may file an amended pleading as of course within twenty (20) days after service of a copy of Preliminary Objections." In addition, Pa. R.C.P. 1026(a) provides that: "[E]very pleading subsequent to the Complaint shall be filed within twenty (20) days after service of the preceding pleading. . . ." Under these two rules and under the trial courts' mistaken belief that the petition herein is a

pleading, it becomes clear that the Petitioners should have been allowed at least twenty (20) days to respond to Respondents' Preliminary Objections.

In *Smith v. Transportation Workers of America,* 541 A.2d 420, 422 (Pa. Cmwlth 1988), the court held that "[a] trial Court may extend or refuse to extend the time within which to meet a filing requirement, so long as the action taken does not amount to an abuse of discretion which causes manifest and palpable injury to one of the parties." In the instant case, the trial court's failure to allow Petitioners' response to Respondents' improper Preliminary Objections before making its determination was a denial of due process. *Harley Davidson Motor Co., Inc. v. Hartman,* 442 A.2d 284 (1982). Further, this denial of due process caused Petitioners to be forced out of court without having an opportunity to argue on the issues. Thus, the trial court's premature ruling on Respondents' Preliminary Objections was injurious to Petitioners.

Petitioners have been unable to locate any cases wherein an abbreviated time allowed in response to Preliminary Objections was not held to be a denial of due process.

Respondents clearly concede that the court in its initial opinion stated that should "fraud or mismanagement of corporate property be alleged, this Court will involve itself if there is mismanagement or fraud either in the selection of officials or the management of the assets, any one member of the organization has a right to say that my Board of Trustees or my officers are doing wrong". *See* Respondents' Brief in Opposition at 5. Petitioners simply made that statement to the court by filing the petition for court involvement. *See* Respondents' Appendix K at 36a. The court clearly stated that "And I caution you that we are going to still be here and I am going to be here or another Judge will oversee the matter". *See*

Respondents' Appendix K at 37a. Respondents claim that the Board of Trustees are the highest judicial authority of the Church, however, this statement pales in the face of the Articles of Incorporation which shows the parties of the Articles of Incorporation. *See* Petitioners' Appendix J at 32a. *See* Respondents' Appendix at 34a. Furthermore, if such was true in the By-laws or even in some other document, Respondents would have produced such in their reproduced record.

Respondents query in the Brief in Opposition as follows:

1. "Why then was not the Order submitted to have the matter marked Settled, Discontinued and Ended?" Answer — because of the understanding and handshake of Respondents and Petitioners of the same church, corporation, and congregation.

2. "Where was the evidence of such agreement?" Such evidence was not allowed to be presented due to the denial of the due process of the trial court, hence this litigation.

3. "Why wait two to three years after the fact to allege such?" Such allegations were alleged and having fallen on the deaf ears of Respondents, the Petition to Vacate the Order to Discontinue and End was then filed.

4. "Why was such an agreement not mentioned in Petitioners' letter to Respondents?" Answer — reference is made to the last sentence of the letter, "This matter is being withdrawn and terminated as the Apostolic manner to resolve this matter". *See* Respondents' Appendix H at 25a.

Respondents continue to allege that Petitioners argue form over substance, and attempt to ignore the violation of Petitioners' due process and denial of the opportunity to

respond to Respondents' Preliminary Objections. Respondents have failed to understand that the prior determination was a Preliminary Injunction, and not the merits of the case. *See* Respondents' Appendix K at 35a, where in the Court clearly states "that under the circumstances the Preliminary Objection (sic) requesting this Court determine that the Court is without jurisdiction to determine this Motion at least in this current term posture will be allowed and the request for a Preliminary Injunction alone will be dismissed." Respondents' Appendix K at 35a. The court went on further to state "Of course, that does not dismiss the Complaint. The matter still continues and can be brought up to the legal limited areas to which I made reference."*See* Respondents' Appendix K at 35a.

CONCLUSION

Petitioners respectfully submit that their Petition for a Writ of Certiorari to the Superior Court of Pennsylvania should be granted.

Respectfully submitted,

LEON W. TUCKER
Counsel of Record
LAW OFFICE OF LEON W. TUCKER
Attorney for Petitioners
Suite 1300, Robinson Building
42 South 15th Street
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(215) 568-8040

APPENDIX H — LETTER FROM JOHN R. BROWN TO LEON W. TUCKER DATED JULY 22, 1994

J. R. BROWN, ESQ.
Counselor and Attorney at Law
701 South 22nd Street
Philadelphia, PA 19146
Tel. (215) 563-7513
Fax (215) 735-4287

July 22, 1994

LEON W. TUCKER, ESQUIRE
N.W. Corner of 15th and Chestnut Street
Suite 1300
Robinson Building
Philadelphia, PA 19102

Re: Church of the Lord Jesus Christ of the Apostolic Faith, Inc., et al. v. Erik Shelton, et al.
November Term, 1991; No. 2101

Dear Mr. Tucker:

Enclosed please find a true and correct copy of Defendant's Preliminary Objections which were filed on this date.

You must file a response by August 22, 1994. Thank you for your kind attention.

Very truly yours,

s/ John R. Brown
JOHN R. BROWN

JRB/sdy
Enclosures

APPENDIX I — EXCERPTS OF RULES AND BY-LAWS

* * *

ARTICLE XVI

SECTION 1: The General Secretary shall succeed temporarily to the office of the General Overseer, upon the death of the General Overseer or by the appointment by the General Overseer and shall hold office only until the next General Assembly elects him or a successor. A statement of the Divine Apostolic Authority of the General Overseer is to appoint his successor with vote of the General Assembly.

SECTION 2: However, an ordained elder shall be eligible regardless of the time of his ordination or the length of his service as elder.

ARTICLE IXVII

All officers local, state, national or international of The Church of the Lord Jesus Christ are appointed by the General Overseer and are holding office at his will and pleasure and can therefore can be removed by him.

ARTICLE IXVIII

All money raised or collected by any individual member, local church, agency or auxiliary of The Church of the Lord Jesus Christ must be sent within one week of its receipt to the President of the Board of Trustees to Headquarters on Apostolic Square, Philadelphia, PA; 19146,

* * *

APPENDIX J — ARTICLES OF INCORPORATION

THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

Court of Common Pleas
March Term, 1947
No. 2175

ARTICLES OF INCORPORATION

To the Honorable, the judges of the said court:

WHEREAS, it is the desire of the undersigned to have incorporated an organization known as THE TRUSTEES OF THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, in accordance with the act of Assembly of May 5, 1933, P.L. 289, as amended, and known as the Non-profit Corporation Law.

NOW, THEREFORE, We, the subscribers and incorporators, being of full age, residents of the Commonwealth of Pennsylvania and citizens of the United States, do declare the following to be the purposes and conditions of the proposed corporation, for and upon which they desire to be incorporated.

I. The name of the proposed corporation shall be the Trustees of THE GENERAL ASSEMBLY OF THE CHURCH OF THE LORD JESUS CHRIST OF THE APOSTOLIC FAITH, INC.

II. The location and post office address of it's initial registered office in this commonwealth shall be 22nd and Montgomery Avenue, Philadelphia 21, Pennsylvania.

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III. The purpose for which is to be formed are:

To take, receive, have, hold and manage real and personal property in turst for the uses and purposes specified by the General Assembly of the Church of the Lord Jesus Christ of the Apostolic Faith or by the will of deed of the donors, with power to convey the same free and discharged of all trusts. The said purposes do not contemplate Pecuniary gain or profit, incidental or otherwise, to it's members.

IV. The corporations shall exist perpetually.

V. The name, place of residence and post office address of each of the incorporators are as follows:

Bishop Sherrod C. Johnson	*1748 N. Twenty Second St. Phila.*
Carey S. Bolling	*3939 Aspen Street, Philadelphia,*
Matthew Roundtree	*2121 Berks Street, Philadelphia*
Andrew Henry	*2424 W. Turner Street, Phila.*
James McDowell	*1802 N. 26th Street, Phila.*

VI. Legal title to all property and the temporal interest of the corporation shall be vested in and managed by six trustees constituting a board of trustees, subject to the right of the corporation from time to time, to increase or decrease their number, as permitted by law, in such manner as may be provided by the by-laws.

2. Trustees shall be elected by the ballot by members of the General Assembly of the Church of the Lord Jesus Christ of the

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Apostolic Faith at annual, regular or special meetings held for that purpose at the times, for the terms, in the manner and qualifications provided by the by-laws and shall hold office until their successors are elected.

3. The following shall hold office as Trustees until their successors are elected:

Bishop Sherrod C. Johnson	*Carey S. Bolling*
Matthew Roundtree	*Wallace E. Young*
Andrew Henry	*James McDowell*

VII. The Corporation shall be organized upon a non-stock basis.

VIII. The Corporation shall begin business with assets in the amount of approximately Sixty-five thousand ($65,000.00) Dollars which the corporation will have to start it's corporate function.

APPENDIX K — LETTER OF LEON W. TUCKER TO HON. ALFRED J. DiBONA, JR. DATED AUGUST 5, 1994

LAW OFFICE OF
LEON W. TUCKER
Suite 1300, Robinson Building
N.W. Cor. 15th & Chestnut Streets
Philadelphia, Pennsylvania 19102

(215) 568 8040

August 5, 1994

Honorable Alfred J. DiBona, Jr.
1903 One East Penn Square
Philadelphia, PA 19107

HAND DELIVERED

RE: Church of the Lord Christ of the Apostolic Faith, Inc., et al. vs. Erik Shelton, et al. CCP. November Term, 1991; No. 2101

Dear Judge DiBona:

Please be informed of my continued representation of the plaintiffs in the above referenced matter. I am in receipt of your Order of August 2, 1994, a copy of which is enclosed for your reference. Defendants' Preliminary Objections were hand delivered to my office on July 22, 1994, with a cover letter stating that Plaintiffs reply is due on August 22, 1994. Enclosed is a copy of Defendants' correspondence reflecting same.

In view of the above I am informally requesting the Court

Appendix K

to reconsider the August 2, 1994, Order pending the response to Defendants' Preliminary Objections.

Respectfully yours,

LEON W. TUCKER

LWT:cjo
Enclosures

cc: John Brown, Esquire (via 1st Class Mail)